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Attorneys for Defendant SHELL OIL COMPANY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation and DOES 1 through 50, Defendants.	Case No. 89-3738 WMB (Kx) SHELL'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; DECLARATIONS IN SUPPORT; AND, EXHIBITS DATE: MAY 7, 1990 TIME: 10:00 A.M. PLACE: COURTROOM 9

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CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation and DOES 1 through 50, Defendants.	Case No. 89-3738 WMB (Kx) SHELL'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; DECLARATIONS IN SUPPORT; AND, EXHIBITS DATE: MAY 7, 1990 TIME: 10:00 A.M. PLACE: COURTROOM 9

Defendant Shell Oil Company (hereinafter "SHELL") files this memorandum in support of its motion for summary judgment on each and every claim asserted against it by Plaintiff Hamilton Dutch Investors (hereinafter "HAMILTON DUTCH"). As will be shown herein, each and every claim asserted by HAMILTON DUTCH is barred by the statute of limitations, and SHELL is entitled to judgment in its favor as a matter of law.

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///

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I

INTRODUCTION

1. This case arises out of the failed sale of an office building and grounds located at the intersection of South Hamilton Avenue and Del Amo Boulevard in Torrance, California. The office building sits on the south east corner of what was, at one time, the United States Government Rubber Making Facility, Plancor 963. From 1943 until 1955 the facility was operated on behalf of the United States by various operators including: Goodyear, Uniroyal, Dow Chemical Company, and SHELL. In 1955 SHELL purchased the entire facility from the United States and operated it until 1972. SHELL closed and sold the facility in 1972. On October 28, 1976 Cadillac Fairview acquired the, then, unimproved and partially cleared land that had been the site of the facility. At least as early as February 24, 1981, Cadillac Fairview discovered that hazardous wastes allegedly had been disposed of on the site of the facility. On December 9, 1983 Cadillac Fairview filed an action before this court for damages arising out of its discovery. See Cadillac Fairview / California, Inc. v. Dow Chemical Co., et.al. and related cross actions, U.S.D.C. Civil No. 83 7996 MRP.

2. Cadillac Fairview sold various developed and undeveloped lots on what had been the facility, including Lot 62 which is the subject of this case. After a series of interim owners, HAMILTON DUTCH INVESTORS acquired Lot 62 of

Tract 4671. It was already improved with the office building that is the subject of this action. As part of an attempted re-sale of the building HAMILTON DUTCH allegedly rediscovered what CADILLAC FAIRVIEW had known since 1981, the property was contaminated by hazardous materials. HAMILTON DUTCH filed the within action (in state court) on March 15, 1989 alleging trespass, breach of easement, and nuisance.

3. HAMILTON DUTCH is charged, as a matter of law, with the knowledge of its predecessor in title, Cadillac Fairview, of the existence of hazardous waste on its property. That knowledge, acquired by Cadillac Fairview in 1981, started the running of the statute of limitations on each claim for injury to the property. Accordingly, the time in which to bring the within causes of action against SHELL expired on February 24, 1984, five years before commencement of the within litigation.

II

STATEMENT OF THE FACTS

4. On October 28, 1976 the real property that is the subject of this litigation was a part of a larger parcel acquired by Cadillac Fairview. Exhibit 2, page . The real property had been a part of Plancor 963, a United States Government Synthetic Rubber Plant opened in about 1943. Exhibit 3, page 36, para. 15. SHELL owned the plant between 1955 and 1972. Benzene was used as a chemical component of styrene (in turn a component of synthetic rubber). Benzene

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reached the styrene plant via pipeline. Tymstra Declaration, pages 18-20. The benzene pipeline was taken out of service as part of the shut down of the plant in 1972. Penland Declaration, pages 16-17.

5. At least as early as February 24, 1981 Cadillac Fairview knew that the property was contaminated by hazardous waste. Exhibit 3, pages 39-45, paras. 22-26 and 33. On December 9, 1983 Cadillac Fairview filed U.S.D.C. Civil No. 83 7996 MRP alleging inter alia, that the property had been contaminated with hazardous wastes as a result of the operation of the synthetic rubber plant. Exhibit 3.

6. By report dated June 15, 1984 Cadillac Fairview was informed that the ground water at the Plancor site contained significant concentrations of benzene, ethyl benzene, and toluene. Further Cadillac Fairview was informed that the water table surface beneath the overall site slopes gently to the south-southeast and that because the gradient is so small, slight changes in local groundwater levels may change the direction of ground water flow. Exhibit 4, pages 61-65.

7. On or about March 4, 1987 HAMILTON DUTCH acquired fee title to a parcel of the real property that had been part of the plancor site owned by Cadillac Fairview. Exhibits 1, page 21, and Exhibit 2, page 27. The real property is described as Lot 62 of Tract 4671 and is commonly known as 20221 South Hamilton Avenue, City of Los Angeles, County of Los Angeles,

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State of California. Exhibit 1, page 21. HAMILTON DUTCH through a report prepared for its counsel learned that soil samples on the property taken from the capillary fringe just above the water table contained benzene, ethyl benzene and toluene. Exhibit 5, pages 61-65. Those are the same contaminants reported in 1984 to HAMILTON DUTCH's predecessor in title, Cadillac Fairview, again at the ground water level. Exhibit 4, pages 61-65.

III

ARGUMENT

A. HAMILTON DUTCH'S CAUSES OF ACTION FOR TRESPASS, NEGLIGENCE, AND STRICT LIABILITY ARE BARRED BY STATUTE OF LIMITATIONS

8. HAMILTON DUTCH's first cause of action is for trespass. HAMILTON DUTCH alleges that SHELL permitted toxic substances from its pipelines to enter the HAMILTON DUTCH property. Exhibit 6, page 79, para. 9. HAMILTON DUTCH's second cause of action is for negligence alleging that SHELL's negligence allowed toxic substances to enter HAMILTON DUTCH's property and cause injury to it. Exhibit 6, page 81, paras. 17 - 19. HAMILTON DUTCH's third cause of action is for strict liability for injury to its property. Exhibit 6, page , paras 20 and 23.

9. "Within three years: * * * * * (b) An action for

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trespass upon or injury to real property * * *" shall be commenced. Calif. Code Civ. Proc. Section 338 (b). The three year statute of limitations is applicable to HAMILTON DUTCH's first, second and third causes of action.

10. Statutes of limitation were created to prevent the assertion of stale claims. California and federal courts have held:

> Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them. Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-349, 88 L.Ed. 788, 64 S.Ct. 582 (1944).

11. HAMILTON DUTCH may argue that they did not "discover" the presence of toxic substances in the capillary fringe just above the groundwater table until 1988. However, Cadillac Fairview's prior knowledge that the site contained concentrations of benzene, ethyl benzene, and toluene are

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imputed to HAMILTON DUTCH for purposes of the statute of limitations.

12. In Bradler v. Craig, 274 Cal.App.2d 466, 79 Cal.Rptr. 401 (1969) plaintiffs alleged that at the time they purchased their home in 1966 they were unaware of defects in the grading, and that there was nothing apparent that would put them on notice of any defective condition. The grading occurred in 1948. Plaintiffs further alleged that in 1966 they discovered damage caused as a direct and proximate result of negligent grading. Id. at 469-470.

13. The defendant developer demurred to plaintiff's complaint arguing that the action was barred by the three year statute of limitation (then Calif. Civ. Proc. Code section 338 subd. 2). The trial court sustained the demurrer and plaintiffs appealed.

14. The Court of Appeal affirmed and held plaintiffs' claim to be barred:

> * * * unless plaintiffs can bring themselves within the judicially developed exception that in "[a]ctions based on progressively developing or continuing wrongs where nature and extent or permanence of the harm are difficult to discover" the running of the statute is postponed "until the time of discovery of (or opportunity to discover) the facts." Id. at 471.

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15. The court rejected plaintiffs' argument that they did not discover the negligence until August 1966 by noting:

> Knowledge or notice of defects or damage that came to the attention of their predecessors in interest would be imputed to plaintiffs as of the date thereof. * * * If there was damage as a result of such defects and such damage met the test of Oaks, the statue would commence tc run. Id. at 472. [Emphasis added.]

[The court in Oakes v. McCarthy Co., 267 Cal.App.2d 231, 255, 73 Cal Rptr. 127 (1969) held that "A cause of action for consequential damages resulting from an underground trespass does not arise until there is surface damage which would put a reasonable man on notice."]

16. In the case at bar HAMILTON DUTCH's predecessor in title, Cadillac Fairview, knew as early as February 24, 1981 that hazardous waste was present on the property. At least as early as June 15, 1984 Cadillac Fairview was on notice that the ground water at the site contained significant concentrations of benzene, ethyl benzene, and toluene. HAMILTON DUTCH alleges that its portion of the Cadillac Fairview site is contaminated by the same toxic substances. The substances found in the capillary fringe just above the ground water are the same substances known by Cadillac Fairview to be in the groundwater on June 15, 1984. The

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contamination had clearly come to the attention of Cadillac Fairview, HAMILTON DUTCH's predecessor in title. That knowledge that came to the attention of Cadillac Fairview is imputed to HAMILTON DUTCH. Bradler v. Craig, 274 Cal.App.2d 466, 472, 79 Cal.Rptr. 401 (1969). The statute commenced to run when Cadillac Fairview had notice or knowledge. Whether that was in 1981 or in 1984 makes no difference. HAMILTON DUTCH did not file the within action until March 15, 1989. HAMILTON DUTCH's causes of action for alleged injury to its property became barred by the statute of limitations at the latest on June 15, 1987, a full 21 months before Plaintiff commenced the instant litigation.

17. SHELL is entitled to judgment in its favor and against HAMILTON DUTCH on Plaintiff's first, second and third causes of action for the reason that the statute of limitation expired at the latest on June 15, 1987 and the instant action was not filed until March 13, 1989. Calif. Civ. Proc. Code Section 338(b).

B. HAMILTON DUTCH'S FOURTH CAUSE OF ACTION FOR BREACH OF EASEMENT IS BARRED BY THE STATUTE OF LIMITATIONS.

18. HAMILTON DUTCH alleges in its fourth cause of action that SHELL breached its obligations under its written reserve of easement by allowing a toxic substance to leak under the property. HAMILTON DUTCH's fourth cause of action sounds in

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contract. An action founded upon any obligation founded upon an instrument in writing is four years. Calif. Civ. Proc. Code Section 337. "The cause of action for breach of contract ordinarily accrues at the time of breach, and the statute begins to run at that time regardless of whether any damage is apparent or whether the injured party is aware of his right to sue." 3 Witkin, California Procedure (3rd ed.), Actions, Section 375, page 402.

19. In the case at bar, Shell ceased to use the pipeline in 1972. (See the Tymstra and Penland Declarations.) SHELL breached its obligations, if at all more than four years before the instant litigation was filed (March 15, 1989). HAMILTON DUTCH's claim for breach of easement, a claim founded on an instrument in writing, is barred by the four year statute of limitations for the reason that it was filed more than four years after the last date when it could have accrued. Calif. Civ. Proc. Code Section 337.

C. HAMILTON DUTCH FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN ITS PURPORTED CAUSES OF ACTION FOR NUISANCE.

20. HAMILTON DUTCH's fifth cause of action is purportedly for private nuisance arising out of SHELL's alleged contamination of HAMILTON DUTCH's own property. Exhibit 6, page 85, para. 33. HAMILTON DUTCH's sixth cause of action is purportedly for willful and malicious maintenance of

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a nuisance by SHELL on HAMILTON DUTCH's own property. Exhibit 6, page 86, paras. 36 and 37. HAMILTON DUTCH's allegations are defective when combined with the finding of the alleged contamination in the Northwest corner of the property (Exhibit 5, pages 68 and 74) for the reason that the owner of land upon which a nuisance exists cannot file a claim against a third party for nuisance.

21. HAMILTON DUTCH alleges that it is the owner in fee simple of the land upon which the alleged nuisance exists. It further alleges that SHELL's contamination of HAMILTON DUTCH's property interferes with and impairs its beneficial use of the property. Exhibit 6, pages 78 and 85, paras. 5 and 33. Nuisance is the unreasonable use of one person's real property to the detriment of a neighbor's property. See Cal. Civil Code Section 3479. "It is the general rule that the unreasonable, unwarrantable or unlawful use by a person of his own property so as to interfere with the rights of other is a nuisance (66 C.J.S., Nuisances, section 1, p. 727)." Hutcherson v. Alexander, 264 Cal.App.2d 126, 130, 70 Cal.Rptr. 366 (1968).

22. Restatement of Torts 2d., Chapter 40, section 821A et. seq. , pages 83 through 179 contains an extensive discussion of nuisance, but does not once indicate that landowner may bring an action to abate a nuisance on his own property. Restatement of Torts 2d. at section 840A specifies that when a person sells land, his liability for nuisance is

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cut off as soon as the purchaser has had a reasonable opportunity to discover the condition and abate it.

23. Finally, of course, HAMILTON DUTCH alleges that the nuisance creates an injury to its land. Again, the statute of limitations for injury to realty is three years. Cal. Civ. Proc. Code Section 338(b). The statute of limitations begins to run on a "nuisance" from the first intrusion, but repetitive intrusions cause the statute to again commence as to each such repetition. Nestle v. City of Santa Monica, 6 Cal.3d. 920, 937, 101 Cal.Rptr. 568 (1982).

24. In the case at bar HAMILTON DUTCH affirmatively alleges that the toxic contamination is on its own property. Nuisance is the unreasonable use of one's own property to the detriment of another that is a nuisance. Hutcherson v. Alexander, 264 Cal.App.2d 128, 130, 70 Cal.Rptr. 366 (1968). There is no allegation that SHELL is maintaining a nuisance on its own property. The uncontested evidence shows that SHELL idled its benzene pipeline in the area in 1972. HAMILTON DUTCH's predecessor knew of benzene and other toxic substances on the property in question not later than 1984. The statute of limitations of three years runs from the first intrusion (here, arguably 1972, 1981 or 1984). HAMILTON DUTCH is charged with the knowledge of its predecessors. Bradler v. Craig, 274 Cal.App.2d 466, 70 Cal.Rptr. 401 (1969). The statute of limitation, assuming that HAMILTON DUTCH can even state a cause of action in nuisance, ran at its latest in June

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1987, well before the within matter was filed on March 13, 1989.

IV

CONCLUSION

25. Defendant SHELL OIL COMPANY is entitled to judgment in its favor as a matter of law on each and claim asserted by Plaintiff HAMILTON DUTCH INVESTORS for the reasons that each claim is barred by the applicable statute of limitations and for the reason that the complaint fails to state a cause of action for nuisance in its fifth and six causes of action.

DATED: April 10, 1990

Respectfully submitted,

KELTNER & SCHREIBER, INC.

By _____
MARK SCHREIBER
Attorneys for Defendant
SHELL OIL COMPANY

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DECLARATION OF MARK SCHREIBER

I, MARK SCHREIBER, declare:

1. I am a competent person over the age of 18 years and make this declaration based upon my person knowledge. If called as a witness at trial or at hearing of the within motion I could competently testify to each of the matters set forth herein.

2. The document attached hereto as Exhibit 1 is a true and exact copy of document number 87 327523 recorded in the Los Angeles County Recorder's office on March 4, 1987.

3. The document attached hereto as Exhibit 2 is a true and exact copy of document number 1135 recorded in the Los Angeles County Recorder's office on October 29, 1976.

4. The document attached hereto as Exhibit 4 is a true and exact copy of the indicated pages from the Dames & Moore report on the Cadillac Fairview site which was a part of the old Shell Chemical Plant. The report was prepared for counsel to Cadillac Fairview and was provided to counsel for Shell Oil Company by Cadillac Fairview's attorneys.

5. The document attached hereto as Exhibit 5 is a true and exact copy of the draft EMCON report on the property at issue in this litigation. It was authenticated at the deposition of its author Mike Wolff, but the transcipt of his deposition is not yet available.

6. The document attached hereto as Exhibit 6 is a true and exact copy of the First Amended Complaint as served on

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Defendant Shell Oil Company by Plaintiff Hamilton Dutch Investors.

I declare under penalty of perjury of the Laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this 12th day of April, 1990.

MARK SCHREIBER

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Attorneys for Defendant

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation and DOES 1 through 50, Defendants.	Case No. 893738 WMB (Kx) DECLARATION OF J.M. PENLAND

I, J.M. PENLAND, declare:

1. I am a competent person over the age of 18 years and make this declaration based upon my personal knowledge. If called as a witness at trial, I could and would competently testify to each of the matters set forth herein.

2. From 1964 through and including 1972 I was corrosion engineer with Shell Oil Co. - West Coast Pipelines. The pipelines running from Shell Dominguez refinery to the Shell Chemical Plant were within my jurisdiction. My responsibilities included external cathodic protection of

those particular pipelines, numbered 1 through 8. I distinctly remember those lines.

3. It is my memory that those lines were idled in or about 1972 as a part of the shut down of the Shell Chemical Plant in Torrance, California. In 1972 it was Shell's practice to flush idled lines with water and fill those lines with inhibited water. Inhibited water is water that contains an anti corrosive.

4. From 1964 through and including 1972 I don't believe that there were any leaks in pipelines 1 through 8 due to corrosion breaks.

5. As part of my responsibilities any leaks in the pipelines due to external damage would have been brought to my attention. I was informed of no such external damage that caused a break or leak in the pipelines.

I declare under penalty of perjury of the Laws of the United States of America that the foregoing is true and correct.

Executed at Pine Grove, California this 6th day of March, 1990.

J.M. Penland

J.M. Penland

Penland.decla

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Attorneys for Defendant

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation and DOES 1 through 50, Defendants.	Case No. 893738 WMB (Kx) DECLARATION OF FRANCIS TYMSTRA

I, FRANCIS TYMSTRA, declare:

1. I am a competent person over the age of 18 years and make this declaration based upon my personal knowledge. If called as a witness at trial, I could and would competently testify to each of the matters set forth herein.

2. From 1955 through and including 1972 I was Department Manager of the Styrene Plant at Shell Chemical located in Torrance, California. By training, education and experience I am a chemist.

3. As Department Manager of the Styrene Plant the

pipelines running from Shell Dominguez refinery to the Styrene Plant were within my jurisdiction. I distinctly remember the benzene line that brought benzene to the styrene plant. 4. From 1955 through and including the period in 1972 that the plant was still in operation I do not recall that there were any leaks in the benzene line that were reported to me. As Department Manager of the Styrene Plant all leaks would have been reported to me. Further, I do not recall being informed of any damage from external sources to the benzene line.

5. The line bringing benzene to the styrene plant ~~were~~ was pressure tested at regular intervals.

6. By way of background, benzene is used to make styrene. It is not used in the making butadiene. Highly simplified the process is as follows: propane is cracked to make ethylene; ethylene combined with benzene makes ethylbenzene; ethylbenzene when treated with a catalyst becomes styrene.

7. Benzene is not a component of butadiene. There were no benzene tanks at the butadiene facility.

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8. It was Shell's practice to idle lines by cleaning them and then filling them with inhibited water. Inhibited water is water combined with an anti-corrosive. I do not believe that benzene is a component of inhibited water.

I declare under penalty of perjury of the Laws of the United States of America that the foregoing is true and correct.

Executed at Ojai, California this 2nd day of March, 1990.

Francis Tymstra

FRANCIS TYMSTRA

Tymstra.decla

EXHIBIT 1

[illegible] Land Title Company
[illegible] Ventura Blvd, Suite 330
[illegible] Hills, CA 91329

87 325724

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31 JAN 10 AM 8 MAR 4 1987
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FEE $27 0
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Tax Parcel No. 7251-33-12

DRAFT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned, Brodero Center Drive, Inc., a California corporation, hereby grants to Hamilton Dutch Investors, a California general partnership all of the real property of the City of Los Angeles, County of Los Angeles, State of California, described as Lot 62 of Tract No. 4671 as shown on the Annexed Map recorded in Book 96 Pages 30 and 31 of Maps in the office of the County Recorder of said county excepting the northerly 100 feet thereof, subject to current taxes, covenants, conditions, and restrictions, rights of way and easements of record, if any.

Dated: As of February 1, 1987.

BRODERO CENTER DRIVE, INC.

By: _____
Martin J. Hook, President

EXHIBIT 1

84-19264-07

V

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On February 2, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared Martin J. Rook, personally known to me or proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument as President of Brodaro Center Drive, Inc. and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Laurie A. Thomas
Notary Public in and for said State

[Seal]

87- 32572

EXHIBIT 1

87 277644

Recording requested by and
when recorded return to
John W. Whitaker, Esq.
Lillick McHose & Charles
725 S. Figueroa Street
12th Floor
Los Angeles, CA 90017

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STATEMENT OF PARTNERSHIP

EXHIBIT 1

111:6722/16

STATEMENT OF PARTNERSHIP

The undersigned, partners of Hamilton Dutch Investors, declare that:

(a) Hamilton Dutch Investors is a partnership;

(b) The name of this partnership is Hamilton Dutch Investors;

(c) The names of the partners are Eugene S. Rosenfeld, Howard Mann, and Steven A. Berlinger;

(d) The partners named in this statement are all the partners; and

(e) Howard Mann, Eugene S. Rosenfeld and Steven A. Berlinger may not convey (as defined in section 15[illegible].5(7) of the California Corporations Code) title to real property standing in the partnership name by conveyance executed in the partnership name, without the written consent of all the other partners, provided that any agreement, deed, deed of trust, or other instrument thus approved, may be executed in the partnership name by Howard Mann, acting alone, or Eugene Rosenfeld and Steven Berlinger, acting jointly.

This statement was executed on February 23, 1987, at Irvine, California.

Eugene S. Rosenfeld

Howard Mann

Steven A. Berlinger

87-27644

111:672Z/1d

EXHIBIT 1

VERIFICATION

The undersigned, each for himself, declares that:

I am a partner in the partnership named in the above statement of partnership, and that statement of partnership is true of my own knowledge.

I declare under penalty of perjury that the above is true and correct and that this declaration was executed on February 24, 1987, at Santa Monica, California.

Eugene S. Rosenfeld

Howard Mann

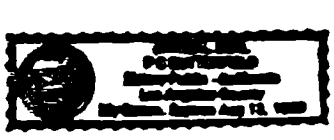
Steven A. Berlinger

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF Los Angeles)

On this 24th day of February, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared EUGENE S. ROSENFELD, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.



Notary Public for the State of California

(SEAL)

87-277644

EXHIBIT 1

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF Los Angeles)

On this 23rd day of March, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared HOWARD MANN, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
P C BUTTERFIELD
Notary Public - California
Los Angeles County
My Comm. Expires Aug 13 1990

Notary Public for the State of California

[SEAL]

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF [illegible])

On this 24th day of March, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared STEVEN A. BERLINER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
LINDA KASA
NOTARY PUBLIC - CALIFORNIA
[illegible]

Notary Public for the State of California

[SEAL]

87- 277644

EXHIBIT 1

EXHIBIT 2

OCT 29 1976

1135

RECORDING REQUESTED BY

TITLE INSURANCE AND TRUST COMPANY

AND WHEN RECORDED MAIL TO:

CADILLAC FAIRVIEW/CALIFORNIA, INC.
c/o Irell & Manella
1800 Avenue of the Stars
Suite 900
Los Angeles, California 90067

RECORDED IN OFFICIAL RECORDS OF LOS ANGELES COUNTY, CA
OCT 29 1976 AT 8 A.M.

MAIL TAX STATEMENTS TO:

Same as above
75 41981 AL

DTT $[illegible]

DTT City of LA 3009.41
DTT [illegible] 819.49
DTT City [illegible] 6205

PARTNERSHIP GRANT DEED

The undersigned grantor declares that documentary transfer tax is $ 3 [illegible], computed on full value less value of liens and encumbrances remaining at time of sale.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CC&F - WILLOWDALE WESTERN PROPERTIES, a partnership organized under the laws of the State of California hereby grants to CADILLAC FAIRVIEW/CALIFORNIA, INC., a California corporation, all its right, title and interest in and to the real property located in the County of Los Angeles, State of California more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

Subject to:

Current Taxes.
Covenants, conditions, restrictions, reservations, rights, rights-of-way encumbrances and easements of record, if any.

IN WITNESS WHEREOF, said partnership has caused this instrument to be executed on the 28 day of October, 1976.

CC&F - WILLOWDALE WESTERN PROPERTIES
a Partnership

By CC&F WESTERN PROPERTIES, INC.,
a Partner

By [signature]

Its VICE PRES.

By CADILLAC FAIRVIEW/CALIFORNIA, INC.
(formerly Willowdale Investments, Inc.),
a Partner

By [signature]

Its [illegible]

OCT 29 1976

EXHIBIT 2

OCT 29 1976

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On [illegible], 1976, before me, the undersigned, a Notary Public in and for said County and State, personally appeared [illegible], known to me to be the [illegible] of CCAL WESTERN PROPERTIES, INC., the corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of said corporation being known to me to be a partner of WILLOWDALE WESTERN PROPERTIES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the within instrument as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
RITA BURNS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires October 9, 1980

[illegible]
Notary Public in and for said County and State

STATE OF [illegible]
COUNTY OF [illegible]) ss.

On [illegible], before me, the undersigned, a Notary Public in and for said County and State, personally appeared [illegible], known to me to be the [illegible] of CALIFIA FAIRFIELD [illegible], the corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of said corporation being known to me to be a partner of CCAL - WILLOWDALE WESTERN PROPERTIES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the within instrument as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
RITA BURNS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires October 9, 1980

[illegible]
Notary Public in and for said County and State

OCT 29 1976

EXHIBIT 2

north line of James Street, as shown on said Map of Tract No. 6671.

EXCEPTING therefrom a 100-foot strip of land described in deed to the Department of Water and Power of the City of Los Angeles dated June 10, 1942, recorded September 3, 1942, in Book 19574 Page 48, Official Records of Los Angeles County.

ALSO EXCEPT therefrom that portion of said Lot 13 included within the lines of Tract No. 32036, as per Map recorded in Book 851, Pages 12 to 14 inclusive of Maps.

RAW LAND PARCELS NO. 27 and 28

All that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, and being a portion of that certain Map entitled "TRACT NO. 6671" recorded in Book 96 of Maps at Pages 30 and 31, Records of Los Angeles County, said portion being more particularly described as follows:

Lots 61 and 62 of said Tract Map.

EXCEPTING therefrom the northerly 15 feet thereof of said Lots as shown on the above mentioned Map of "Tract No. 6671".

RAW LAND PARCEL NO. 29

All that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, and being a portion of the east one-half of the south one-third of Lot 174 of said Lot is shown on that certain Map entitled "Map of Subdivision recorded in Book 15 of Miscellaneous Records at Page 1 and 2 Records of Los Angeles County, said portion being more particularly described as follows:

Beginning at the point of intersection of a line parallel with and perpendicularly distant 30.00 feet northerly of the westerly line of 190th Street and the easterly line of that certain parcel of land described in deed to the State of California and recorded in Book D-1961 of Deeds at Page 67, Official Records of said County; thence from said Point of Beginning northerly along said easterly line N 0°01'59" E 36t.42 feet to a point on the southerly line of that certain parcel of land described in deed to the State of California and recorded in Book 41111 of Deeds at Page 150, Official Records of said County; thence easterly along said southerly line the following courses: S 89°55'13" E 166.79 feet and N 89°55'13" E 259.71 feet; thence leaving said southerly line southerly along a line parallel with and concentric with and perpendicularly distant 30.00 feet westerly of the centerline of Normandie Avenue S 0°01'26" E 358.00 feet to the aforementioned parallel line 30.00 northerly of the centerline of 190th Street; thence westerly along last said parallel line S 89°54'47" W 426.57 feet to the Point of Beginning.

RAW LAND PARCEL NO. 30

All that certain real property situate in the City of Los Angeles County of Los Angeles, State of California, and being a portion

EXHIBIT "A"
Page 4 of 9

EXHIBIT 2

OCT 29 1976

EXHIBIT 3

WALD, HARKRADER & ROSS
Thomas H. Truitt
J. Brian Molloy
Mary Duffy Becker
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Telephone: (202) 828-1200

IRELL & MANELLA
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Los Angeles, California 90067

Telephone: (213) 879-2600 or 277-1010

Attorneys for Plaintiff
Cadillac Fairview/California, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CADILLAC FAIRVIEW/CALIFORNIA, INC., a California corporation,

Plaintiff,

v.

DOW CHEMICAL CO., a Delaware corporation, SHELL OIL CO., a Delaware corporation, INTERNATIONAL PROPERTY DEVELOPMENT CO., a California corporation, CC&F WESTERN DEVELOPMENT CO., INC., a California corporation, CABOT, CABOT & FORBES INTERIM CO., INC., a Massachusetts corporation, WILLIAM RUCKELSHAUS, Administrator of the Environmental Protection Agency of the United States of America, GERALD P. CARMEN, Administrator of the General Services Administration of the United States of America (successor-in-interest to Defense Plant Corporation, Reconstruction Finance Corporation and the Federal Facilities Corporation), UNITED STATES OF AMERICA, PETER RANK, the Director of the State Department of Health Services of the State of

No. 83 7996 CTL (

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 AND OTHER FEDERAL STATUTES, DECEIT, BREACH OF WARRANTY, PUBLIC NUISANCE, ULTRA-HAZARDOUS ACTIVITIES AND NEGLIGENCE

DEMAND FOR JURY TRIAL

EXHIBIT 3

California, THOMAS HEINSHEIMER, Chairman of the Board of the South Coast Air Quality Management District of the State of California, JANE BRAY, Acting Chairman of the Board of the Regional Water Quality Control Board of the State of California for the Los Angeles Region, and DOUGLAS FERGUSON, President of the Central and West Basin Water Replenishment District of the State of California,

Defendants.

COMPLAINT

Plaintiff Cadillac Fairview/California, Inc. ("Cadillac Fairview") alleges that:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 5 U.S.C. §§ 701 et seq.; 28 U.S.C. §§ 1331, 1337, 1349, and 1361; 42 U.S.C. §§ 9606(a), 9607(g), and 9613(b); § 7 of the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418; § 14(a) of the Rubber Act of 1948, ch. 166, 62 Stat. 101; § 2(a)(6) of the Second War Powers Act of 1942, as amended, ch. 199, 56 Stat. 176; and jurisdiction pendent and ancillary thereto. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Cadillac Fairview has satisfied all jurisdictional prerequisites to filing this complaint.

2. Each of the defendants is found, or transacts business, or is otherwise subject to suit in the Central District of California.

STATEMENT OF THE CASE

3. In this action, plaintiff Cadillac Fairview seeks compensatory, declaratory and injunctive relief against defendant

EXHIBIT

based on the past disposal and continued presence of chemical substances, including hazardous wastes and hazardous substances, on property currently owned by Cadillac Fairview. Defendants are former owners, lessees or administrators of this property or former operators of a Government-owned rubber-producing facility thereon. As described in more detail below, these defendants, inter alia, disposed of or licensed and permitted the disposal of these chemical substances and failed to undertake any removal or remedial action concerning the property. These actions or failures to act have created a continuing nuisance that threatens the health, safety and welfare of the community, damages the value of property owned by Cadillac Fairview and property in the neighborhood, and threatens to result in substantial environmental damage and a risk of bodily injury and sickness. In addition, Cadillac Fairview seeks compensation from two defendants for damages based on deceit and breach of warranty.

FIRST CLAIM FOR DECLARATORY RELIEF

AGAINST ALL DEFENDANTS

4. Cadillac Fairview is a corporation duly organized and existing in good standing in the State of California. Cadillac Fairview currently owns certain real property (hereinafter referred to as the "Site") located near the intersection of Del Amo Boulevard and Vermont Avenue in the City of Torrance, California, and more fully described in Exhibit "A" attached hereto and made a part hereof by this reference.

5. Defendant Dow Chemical Co. ("Dow") is a corporation organized under the laws of the State of Delaware. Cadillac Fairview is informed and believes, and based thereon alleges,

EXHIBIT 3

that Dow, and others at Dow's direction, operated part of a Government-owned rubber-producing facility on the Site and disposed of chemical substances including hazardous wastes and hazardous substances on the Site, that Dow was aware at the time that it operated on the Site that such chemical substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

6. As used in this Complaint, the term "hazardous substances" shall have the meaning provided in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(14), and the term "hazardous waste" shall have the meaning provided in Section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(5).

7. Defendant Shell Oil Co. ("Shell") is a corporation organized under the laws of the State of Delaware. Shell owned the Site from April 19, 1955 to December 12, 1972. Cadillac Fairview is informed and believes, and based thereon alleges that Shell, and others at Shell's direction, disposed of chemical substances including hazardous wastes and hazardous substances on the Site, that Shell was aware at the time that it owned the Site that such chemical substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

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EXHIBIT 3

8. Defendant International Property Development Co. ("International") is a corporation organized under the laws of the State of California. International owned the Site from December 12, 1972, to August 21, 1974. Cadillac Fairview is informed and believes, and based thereon alleges, that International was aware at the time that it owned the Site that chemical substances including hazardous wastes and hazardous substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

9. Defendant CC&F Western Development Co., Inc. ("Western") is a corporation organized under the laws of the State of California. Western and its affiliates owned the Site from August 21, 1974 to October 28, 1976. Cadillac Fairview is informed and believes, and based thereon alleges, that Western was aware at the time that it owned the Site that chemical substances including hazardous wastes and hazardous substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

10. Defendant Cabot, Cabot & Forbes Interim Co., Inc. ("Interim") is a corporation organized under the laws of the Commonwealth of Massachusetts. Cadillac Fairview is informed and believes, and based thereon alleges, that it is the successor in interest to the rights and obligations of International and Western.

11. As used hereinafter in this complaint, "CC&F" shall include International, Western, and Interim and the officers, employees and agents thereof.

12. Defendant Gerald P. Carmen is the Administrator of the General Services Administration ("GSA") of the United States of America. The Administrator of the GSA is the successor-in-interest to the Defense Plant Corporation, the Reconstruction Finance Corporation, and the Federal Facilities Corporation. The Defense Plant Corporation, the Reconstruction Finance Corporation and the Federal Facilities Corporation were federal corporations organized pursuant to Acts of Congress and empowered with the right "to sue and be sued." Pursuant to 59 Stat. 310, the Reorganization Plan No. 1 of 1957, and the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418, the Administrator of the GSA assumed all liabilities of these corporations at issue in this action.

13. Defendant United States of America is named as a defendant in this action pursuant to § 7 of the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418, which states that "any suit, action, or other proceeding which, but for such dissolution, would be commenced by or against the [Federal Facilities] Corporation, shall be commenced by or against the United States in a Federal court of competent jurisdiction."

14. As hereinafter used in this complaint, "Administrator of the GSA" shall include United States of America, the Administrator of the GSA, the Defense Plant Corporation, the Reconstruction Finance Corporation, the Federal Facilities Corporation and the officers, employees, and agents thereof.

15. From October 16, 1942 to April 15, 1955, the Site and a rubber-producing facility thereon were owned, operated, or administered by the Defense Plant Corporation, the Reconstruction Finance Corporation and the Federal Facilities Corporation. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances including hazardous wastes and hazardous substances on the Site, that these entities were aware or should have been aware at the time they owned, operated or administered the Site or the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

16. The authority to own, operate, administer, and inspect the operations of Government-owned rubber facilities was granted by the Second War Powers Act of 1942, as amended, ch. 199, 56 Stat. 176, and was extended in Public Law No. 24 of the 80th Congress, 2d Session. Under the Reconstruction Finance Corporation Act, as amended by the Act of June 25, 1940, ch. 427, 54 Stat. 572, the Reconstruction Finance Corporation was authorized to create or to organize a corporation with power to engage in the manufacture of synthetic rubber, and pursuant to that authority, the Defense Plant Corporation was created. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances

including hazardous wastes and hazardous substances on the Site, that these entities were aware, or should have been aware, at the time they owned, operated or administered the Site and the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment, all in contravention of their statutory obligations under these acts and their charters.

17. Under § 7 of the Rubber Act of 1948, ch. 166, 62 Stat. 101 and Exec. Order No. 9942, 13 Fed. Reg. 1823 (1948), the Reconstruction Finance Corporation was granted the authority to administer the operations of Government-owned rubber facilities, including

> all power and authority . . . to do all things necessary and proper in connection with and related to such production and sale, including but not limited to the power and authority to make repairs, replacements, alterations, improvements, or betterments to the rubber-producing facilities owned by the Government or in connection with the operation thereof and to make capital expenditures as may be necessary for the efficient and proper operation and maintenance of the rubber-producing facilities owned by the Government and performance of said powers, functions, duties, and authority.

By Exec. Order No. 10539, 19 Fed. Reg. 3827 (1954), the Federal Facilities Corporation was designated to replace the Reconstruction Finance Corporation in the performance of the functions described above. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances including hazardous wastes and hazardous substances, that these entities were aware, or should have been aware, at the time they owned, operated or administered the Site or the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or threat of release of such chemical substances from the Site into the environment, all in contravention of their statutory obligations and their charters.

18. Defendant William Ruckelshaus is Administrator of the United States Environmental Protection Agency ("EPA") and has been delegated the authority by the President of the United States of America to administer the fund of monies ("the Superfund") established under CERCLA, to expend those funds for purposes of cleaning up sites that contain hazardous wastes and hazardous substances that pose a threat to health or the environment, and to determine whether proposed clean-up actions are consistent with the national contingency plan.

19. Defendant Peter Rank is the Director of the State Department of Health Services of the State of California and has the authority to initiate removal or remedial action in response to a release or threatened release of a hazardous substance in

California unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party. Defendant Thomas Heinsheimer is the Chairman of the Board of the South Coast Air Quality Management District. Defendant Jane Gray is the Acting Chairman of the Board of the Regional Water Quality Control Board for the Los Angeles Region. Defendant Douglas Ferguson is the President of the Central and West Basin Water Replenishment District.

20. Cadillac Fairview purchased the Site, pursuant to a written contract with Western, on October 28, 1976, as part of a much larger parcel of property. Cadillac Fairview intended to develop the entire parcel as a commercial and industrial center, and its intended purpose for the entire parcel was well known to CC&F at the time of the purchase.

21. When Cadillac Fairview purchased the parcel from Western, Cadillac Fairview had not been informed, and was not aware, that any hazardous wastes or hazardous substances had been disposed of on the Site. Cadillac Fairview has never produced, stored, or disposed of any chemical substance, hazardous waste, or hazardous substance on the Site, nor transported any chemical substance, hazardous waste or hazardous substance to the Site.

22. On February 19, 1981, Cadillac Fairview sold and conveyed a portion of the Site, together with adjacent real property, to Western Waste Industries, a California corporation. On February 24, 1981, Western Waste Industries notified Cadillac Fairview that hazardous wastes had been disposed of on the Site. Prior to this date, Cadillac Fairview was unaware that any hazardous waste or hazardous substance had been disposed of on the

Site. Western Waste Industries demanded that Cadillac Fairview rescind the sale and conveyance of that portion of the Site which had been sold and conveyed to Western Waste Industries.

23. After extensive negotiations, Cadillac Fairview agreed to repurchase that portion of the Site which it had sold and conveyed to Western Waste Industries, and it agreed to convey additional real property adjacent to the Site to Western Waste Industries.

24. During these negotiations, hazardous wastes and hazardous substances were found to have been disposed of on a small portion of the additional real property adjacent to the Site which was conveyed to Western Waste Industries, but were believed to be contained in and confined to a shallow disposal pond close to the surface of the land. In partial consideration for the transaction referred to in Paragraph 23 of this Complaint, Western Waste Industries agreed to remove all of the hazardous wastes and hazardous substances from the shallow disposal pond on this additional real property (adjacent to the Site) which it acquired from Cadillac Fairview.

25. During December, 1982, Western Waste Industries began to remove the hazardous wastes and hazardous substances from the shallow disposal pond on the property (adjacent to the Site) which it had acquired from Cadillac Fairview. In the course of removing the hazardous wastes and hazardous substances from the shallow disposal pond on the property (adjacent to the Site) which it acquired from Cadillac Fairview, Western Waste Industries discovered that a portion of the hazardous wastes and hazardous

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substances had migrated into the soil below the shallow disposal pond.

26. Based upon subsequent tests and engineering analyses, Cadillac Fairview is now informed and believes, and based thereon alleges, that the chemical substances including hazardous wastes and hazardous substances which were deposited into disposal pits and ponds on the Site are also migrating into previously uncontaminated soil and may reach and contaminate fresh water aquifers below the surface of the Site. Cadillac Fairview is informed and believes that these fresh water aquifers are used both for industrial purposes and for drinking water. The contamination of these aquifers by the hazardous wastes and hazardous substances contained on the Site may cause substantial environmental damage and poses a threat of serious bodily injury and sickness to persons who consume drinking water obtained from this source. Such threats present an imminent and substantial danger to the public health. Moreover, if such migration continues unabated, any removal or remedial action will become increasingly more difficult and costly.

27. Cadillac Fairview is informed and believes, and based thereon alleges, that certain of the chemical substances includin hazardous wastes and hazardous substances on the Site tend to vaporize and may contaminate the air quality in the residential, commercial and industrial areas surrounding the Site. Cadillac Fairview is informed and believes, and based thereon alleges, tha many residents in the area have complained of respiratory ailment and other illnesses which they attribute to the chemical vapors purportedly escaping from the Site. Cadillac Fairview has no pr

sent ability to determine, and does not intend by these allegations to admit or deny, that any such ailment or illness has been caused by wastes or substances disposed of on the Site.

28. Cadillac Fairview has at all times exercised due care with respect to chemical substances on the Site, taking into consideration the characteristics of the substances, in light of all relevant facts and circumstances, and has taken all reasonable precautions against foreseeable acts or omissions of third parties which could result in environmental damage or any release of the substances. Cadillac Fairview at its own expense has retained consulting engineers to conduct chemical analyses and testing of the chemical substances disposed of on the Site. Cadillac Fairview at its own expense has constructed a six-foot chain link fence around the portion of the Site on which chemical substances appear to have been disposed of, and has posted bilingual "no trespassing" signs at the Site. Cadillac Fairview at its own expense has also maintained a private guard service to prevent trespassing on the Site. Each and all of these precautions have been undertaken at the request of the State Department of Health Services in order to protect neighborhood residents from bodily injury or sickness which might result from frequent direct contact with the substances.

29. Cadillac Fairview has filed a Notification of Hazardous Waste Site with the EPA, as required by Section 103(c) of CERCLA, 42 U.S.C. § 9603(c). Cadillac Fairview is informed and believes, and based thereon alleges, that Dow and Shell have also filed the notifications with the EPA required by Section 103(c) of CERCLA. Cadillac Fairview has received no information indicat

ing that the Administrator of the GSA filed the notification required by Section 103(c) of CERCLA and based thereon alleges, that the Administrator of the GSA has not filed such notification. Cadillac Fairview has requested that the EPA approve and certify under the national contingency plan mandated by CERCLA a removal or remedial action plan for the Site, but has been told by representatives of the EPA that the Site is not on its priority list, that no such plan will be developed, nor will any intensive investigation of the Site be undertaken by the EPA for an extended period of time. Such failure on the part of the EPA to approve and certify a removal or remedial action plan for the Site is in contravention of its duty under CERCLA.

30. Cadillac Fairview is informed and believes, and based thereon alleges, that Western Waste Industries notified the State Department of Health Services in or about March 1981 that chemical substances had been disposed of on the Site. Since that date, other agencies of the State of California, including the South Coast Air Quality Management District, the California Regional Water Quality Control Board for the Los Angeles Region, and the Central and West Basin Water Replenishment District have been notified that chemical substances have been disposed of on the Site.

31. The State Department of Health Services has requested that Cadillac Fairview conduct chemical analyses and testing of the chemical substances, including the hazardous wastes and hazardous substances, disposed of on the Site, that Cadillac Fairview construct a new fence around the portion of the Site on which hazardous wastes and hazardous substances appear to have

been disposed of, that Cadillac Fairview post "no trespassing" signs at the Site, and that Cadillac Fairview maintain a private guard service to prevent trespassing on the Site. The Department of Health Services has not requested or required Dow, Shell, CC&F, or the Administrator of the GSA to undertake any removal or remedial action regarding the hazardous wastes and hazardous substances disposed of on the Site, notwithstanding that Dow, Shell, CC&F, and the Administrator of the GSA have the responsibility under CERCLA for all costs of removal or remedial action and for damages for injury to, destruction or loss of natural resources, resulting from the hazardous wastes and hazardous substances disposed of on the Site.

32. The EPA, the State Department of Health Services, the South Coast Air Quality Management District, the California Regional Water Quality Control Board for the Los Angeles Region, and the Central and West Basin Water Replenishment District each have an interest in the application of CERCLA and other federal and state environmental laws and regulations to the Site. Disposition of this action in their absence may leave Cadillac Fairview, Dow, Shell, CC&F and the Administrator of the GSA subject to a substantial risk of incurring multiple or otherwise inconsistent liabilities, in that an adjudication of the rights and liabilities of the parties may not then bind each and all of these governmental agencies in future administrative or judicial proceedings to which they are, or any of them is, a party. In their absence, complete relief cannot be accorded among the other parties.

33. Cadillac Fairview has informed each and all of Dow,

Shell, CC&F, and the Administrator of the GSA that the hazardous wastes and hazardous substances disposed of in the past and continuing to be present on the Site may have entered into the environment or have been emitted into the air or discharged into water and that these wastes and substances have begun to migrate from the area in which they were deposited, resulting in a release or a threatened release. Dow, Shell, CC&F, and the Administrator of the GSA are liable under CERCLA for any removal and remedial action that is necessary to prevent environmental damage, and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview has demanded that Dow, Shell, CC&F, and the Administrator of the GSA undertake all removal and remedial action that is necessary concerning the Site, but Dow, Shell, CC&F, and the Administrator of the GSA have each refused to undertake such actions. Dow, Shell, CC&F, and the Administrator of the GSA have further denied any liability for any removal or remedial action.

34. An actual controversy exists between Cadillac Fairview on the one hand, and Dow, Shell, CC&F, and the Administrator of the GSA, on the other hand, with respect to their relative rights and duties to abate further environmental damage and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview seeks a declaration of these rights and duties and, in particular, seeks a judicial determination of the persons who are responsible under CERCLA for the removal of hazardous wastes and hazardous substances from the Site or for any other

EXHIBIT

remedial, removal or other action required to abate further environmental damage and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview also seeks a judicial declaration that it has no liability under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or under any other applicable statute, regulation, or principle of common law, for costs of removal or remedial action incurred by the United States, the State of California, or any agencies or departments thereof or created thereby, or for any other costs of response incurred by any other person, or for damages for injury to, destruction of, or loss of natural resources, and has no obligation to take any removal or remedial action, by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview further seeks a judicial declaration that if the EPA or the State of California, or any agency or department thereof, chooses to incur costs of removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances from the Site, or if the EPA or the State of California causes others to incur them, then such costs are to be borne jointly and severally by each of the persons who owned the Site at the time of the disposal of hazardous wastes and hazardous substances on the Site and by the persons who arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous wastes and hazardous substances on the Site, including Dow, Shell, and the Administrator of the GSA.

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SECOND CLAIM FOR RELIEF FOR DAMAGES AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

35. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 34, inclusive, of this Complaint.

36. Cadillac Fairview has incurred costs, including costs of chemical analyses and testing for chemical substances including hazardous wastes and hazardous substances disposed of on the Site, of constructing a fence around the portion of the Site on which hazardous wastes and hazardous substances appear to have been disposed of, of posting "no trespassing" signs at the Site, and of maintaining a private guard on a twenty-four hour basis to prevent trespassing on the Site, which constitute necessary costs, including but not limited to necessary costs of response consistent with the national contingency plan. The amount of these necessary costs of response is not precisely ascertainable at this time, but is in excess of Seventy Thousand Dollars ($70,000).

37. Cadillac Fairview has presented a claim to Dow, Shell, CC&F, and the Administrator of the GSA for its necessary costs, including but not limited to necessary costs of response consistent with the national contingency plan, but each and all of Dow, Shell, CC&F, and the Administrator of the GSA have failed and continue to fail, contrary to law, to satisfy the claim.

THIRD CLAIM FOR RELIEF FOR AN INJUNCTION AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

38. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 37,

inclusive, of this Complaint.

39. Cadillac Fairview has demanded that Dow, Shell, CC&F, and the Administrator of the GSA perform all necessary removal or remedial action concerning the Site consistent with the national contingency plan to prevent the further release or threat of release of chemical substances including hazardous wastes and hazardous substances into the environment, but Dow, Shell, CC&F, and the Administrator of the GSA have failed and continue to fail to perform any such action, or to accept any responsibility for any injury, including but not limited to injury to natural resources resulting from the substances disposed of on the Site.

40. Cadillac Fairview is informed and believes, and based thereon alleges, that removal or remedial action concerning the Site consistent with the national contingency plan is urgently necessary due to the risk of irreparable injury, including substantial environmental damage and serious bodily injury and sickness, resulting from the substances disposed of on the Site. Such risk constitutes an imminent and substantial danger to public health and welfare. Cadillac Fairview has no adequate remedy at law to avoid the injury which has occurred, and which will continue to occur, if an injunction is not issued requiring Dow, Shell, CC&F, and the Administrator of the GSA to remove the chemical substances including hazardous wastes and hazardous substance from the Site or to take other appropriate remedial, removal or other action to prevent further injury to the environment.

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FOURTH CLAIM FOR RELIEF FOR DAMAGES BASED ON DECEIT AGAINST DEFENDANTS WESTERN AND INTERIM

41. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 40, inclusive, of this Complaint.

42. Cadillac Fairview is informed and believes, and based thereon alleges, that while Western owned the Site, Western learned that the Site was contaminated by chemical substances including hazardous wastes and hazardous substances.

43. At the time that Cadillac Fairview purchased the Site from Western, Cadillac Fairview was unaware that hazardous wastes and hazardous substances had been disposed of on the Site. Western never informed Cadillac Fairview that hazardous wastes and hazardous substances had been disposed of on the Site. The hazardous wastes and hazardous substances were not detectable in any reasonable inspection. Cadillac Fairview would not have purchased the Site if it had been aware of the hazardous wastes and hazardous substances, in part because such a purchase exposed Cadillac Fairview to unexpected claims, litigation and potential liability regarding the Site, including potential liability for removal and remedial action concerning the Site.

44. Cadillac Fairview is informed and believes, and based thereon alleges, that at the time that Cadillac Fairview purchased the Site from Western, Western knew that Cadillac Fairview was unaware of the hazardous wastes and hazardous substances, and knew that Cadillac Fairview would not have purchased the Site from Western if it had been aware of them. Western had a duty to

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inform Cadillac Fairview that the Site contained hazardous wastes and hazardous substances.

45. Cadillac Fairview has been damaged by Western's fraudulent representations and nondisclosures in an amount which cannot be precisely ascertained at the present time but is not less than the sum of Seventy Thousand Dollars ($70,000) and includes all of the expenses incurred and to be incurred by Cadillac Fairview as a consequence of the deceit, including but not limited to those necessary to protect the environment and the public from the hazardous wastes and hazardous substances on the Site, as well as the expenses incurred and to be incurred by Cadillac Fairview in this action.

FIFTH CLAIM FOR RELIEF FOR DAMAGES BASED ON BREACH OF EXPRESS WARRANTY AGAINST DEFENDANTS WESTERN AND INTERIM

46. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 45, inclusive, of this Complaint.

47. Western and its affiliates executed and delivered to Cadillac Fairview a "Certificate of Seller" on or about March 17, 1976, and a "Purchase Agreement" on or about October 28, 1976, each and both of which contained representations and warranties concerning the Site to the effect that Western was unaware of any undisclosed adverse soils conditions affecting the Site. Western failed to disclose that the Site contained hazardous wastes and hazardous substances.

48. The failure of Western to disclose the presence of hazardous wastes and hazardous substances on the Site was a

breach of the express representations and warranties contained in the "Certificate of Seller" and the "Purchase Agreement."

49. Cadillac Fairview gave timely written notice to Western that the Site appeared to be contaminated with hazardous wastes and hazardous substances and that Cadillac Fairview intended to assert a claim for damages against Western on account of the breach by Western of its representations and warranties contained in the "Certificate of Seller" and "Purchase Agreement."

50. The damages sustained by Cadillac Fairview as a proximate result of the breach by Western of its representations and warranties contained in the "Certificate of Seller" and "Purchase Agreement" cannot be precisely ascertained at the present time but are not less than the sum of Seventy Thousand Dollars ($70,000) and include all of the expenses incurred and to be incurred by Cadillac Fairview as a consequence of the breach, including but not limited to those necessary to protect the environment and the public from the hazardous wastes and hazardous substances on the Site, as well as the expenses incurred and to be incurred by Cadillac Fairview in this action.

SIXTH CLAIM FOR DECLARATORY RELIEF BASED ON PUBLIC NUISANCE AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

51. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 50, inclusive, of this Complaint.

52. The past disposal and continued presence of chemical substances including hazardous wastes and hazardous substances on the Site have created a public nuisance, in that they threaten

the health, safety and welfare of the community, damage the value of property in the neighborhood, and interfere with the full and free use of property in the neighborhood. Cadillac Fairview has suffered a special injury from this public nuisance, because the Site has been rendered worthless and because Cadillac Fairview is exposed to potential liability to abate the nuisance and otherwise to render the Site in compliance with applicable state and federal laws and regulations, and is also exposed to potential liability for injuries to other persons and property.

53. The conditions at the Site have been created by the intentional, knowing, willful, negligent and ultra-hazardous acts of Dow, Shell, CC&F and the Administrator of the GSA in that these defendants (except for CC&F) disposed of, or licensed and permitted the disposal of, chemical substances, including hazardous wastes and hazardous substances, at the Site and all of these defendants (including CC&F) failed to take measures to prevent further migration or threat of migration of these substances. Dow, Shell, CC&F and the Administrator of the GSA have the liability for, and the duty to indemnify Cadillac Fairview with respect to, any resulting injury, damages, liability, or duty of abatement.

54. An actual controversy exists between Cadillac Fairview, on the one hand, and Dow, Shell, CC&F, and the Administrator of the GSA, on the other hand, with respect to their relative rights and duties to abate this public nuisance and to pay for the injuries, damages, and liabilities resulting therefrom. Cadillac Fairview seeks a judicial declaration to determine the respective and relative duties of Dow, Shell, CC&F, and the Administrator o

the GSA to abate this public nuisance and the right of Cadillac Fairview to seek indemnity from Dow, Shell, CC&F, and the Administrator of the GSA for any costs incurred to abate this public nuisance and for any injuries, damages or liabilities incurred in connection therewith.

SEVENTH CLAIM FOR DECLARATORY RELIEF BASED ON ULTRAHAZARDOUS ACTIVITIES AGAINST DEFENDANTS DOW, SHELL, AND THE ADMINISTRATOR OF THE GSA

55. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 54, inclusive, of this Complaint.

56. The disposal of chemical substances including hazardous wastes and hazardous substances on the Site by Dow, Shell and the Administrator of the GSA was an abnormally dangerous activity which created a high degree of risk to the persons and property of others, a risk unlikely to be eliminated by the exercise of due care, and which was not a matter of common usage. Cadillac Fairview has never carried on any such activity.

57. An actual controversy exists between Cadillac Fairview, on the one hand, and Dow, Shell and the Administrator of the GSA, on the other hand, with respect to their relative rights and duties to take the removal and remedial actions necessary to abate the risk of injury to other persons and property resulting from the disposal of hazardous wastes and hazardous substances on the Site. Cadillac Fairview seeks a judicial declaration to determine the respective and relative duties of Dow, Shell and the Administrator of the GSA to take the removal and remedial actions necessary to abate the risk of injury to other persons

and property resulting from the disposal of hazardous wastes and hazardous substances on the Site.

EIGHTH CLAIM FOR DECLARATORY RELIEF BASED ON NEGLIGENCE AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

58. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 57, inclusive, of this Complaint.

59. Cadillac Fairview is informed and believes, and based thereon alleges, that defendants Dow, Shell and the Administrator of the GSA acted negligently in disposing of or permitting the disposal of the hazardous wastes and hazardous substances on the Site.

60. Cadillac Fairview is informed and believes, and based thereon alleges, that defendants Shell, CC&F, and the Administrator of the GSA negligently maintained the Site by permitting the continued presence and migration of hazardous wastes and hazardous substances disposed of on the Site, and negligently failed to undertake any removal or remedial action concerning the Site.

61. Cadillac Fairview at all times has exercised due care with respect to the hazardous wastes and hazardous substances disposed of on the Site.

NINTH CLAIM FOR RELIEF FOR INJUNCTION AGAINST DEFENDANT ADMINISTRATOR OF THE EPA

62. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 40, inclusive, of this Complaint.

63. Defendant Administrator of the EPA has been delegated

the authority to administer the Superfund established under CERCLA, to expend those funds for purposes of cleaning up sites that contain hazardous substances and that pose, inter alia, an imminent and substantial danger to the public health or welfare, and to determine whether proposed clean-up actions are consistent with the national contingency plan.

64. Defendant Administrator of the EPA has failed to approve and certify under the national contingency plan mandated by CERCLA a removal or remedial action plan for the Site, in contravention of his statutory duty under CERCLA.

65. Cadillac Fairview is informed and believes, and based thereon alleges that a removal or remedial action concerning the Site consistent with the national contingency plan is urgently necessary because of the imminent and substantial danger to the public health or welfare and risk of irreparable injury resulting from the substances disposed of on the Site. Cadillac Fairview has no adequate remedy at law to avoid the injury which has occurred, and which will continue to occur, if an injunction is not issued requiring the Administrator of the EPA to approve and certify a removal or remedial plan for the Site or to take other appropriate action to prevent further injury to the environment.

Wherefore, Cadillac Fairview prays for judgment as follows:

1. For a declaratory judgment:

A. That Dow, Shell, CC&F, and the Administrator of the GSA are responsible under CERCLA, and any other applicable statute, regulation, or principle of common law: (i) for such removal or remedial action as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to th

environment by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site, and to prevent or minimize the release of hazardous wastes and hazardous substances from the Site so that they do not migrate to cause substantial danger to present or future public health or welfare or to the environment, and (ii) for damages for injury to, destruction of, or loss of natural resources by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site.

B. That Cadillac Fairview has no liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or under any other applicable statute, regulation, or principle of common law, for costs of removal or remedial action incurred by the United States Government or the State of California, or for any other costs of response incurred by any other person, or for damages for injury to, destruction, or loss of natural resources, and has no obligation to take any removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site.

C. That if the United States Government or the State of California incurs costs, or causes others to incur costs, of removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site, such costs are to be borne jointly and severally by the persons who owned the Site at the time of the disposal of hazardous wastes and hazardous substances on the Site and by the persons who arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous wastes

EXHIBIT

and hazardous substances at the Site; and that such persons include Dow, Shell, and the Administrator of the GSA.

D. Otherwise declaring the rights and duties of the respective parties.

2. For compensatory damages against Dow, Shell, CC&F, and the Administrator of the GSA in an amount to be determined at trial.

3. For an injunction directing Dow, Shell, CC&F, and the Administrator of the GSA to perform all necessary removal and remedial action concerning the Site consistent with the national contingency plan to prevent further releases of hazardous wastes and hazardous substances into the environment.

4. For an injunction directing Dow, Shell, CC&F and the Administrator of the GSA to abate the nuisance at the Site caused by the presence, migration, and threat of migration of hazardous wastes and hazardous substances, by taking such actions as the court shall find to be necessary and sufficient to completely and permanently abate the migration and threat of migration of those hazardous wastes and hazardous substances.

5. For an injunction directing the Administrator of the EP to approve and certify a removal or remedial plan for the Site consistent with the national contingency plan to prevent further injury to the environment.

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6. That Cadillac Fairview be awarded the costs and disbursements of this action.

7. For such other relief as the Court deems proper.

Dated: December 9, 1983.

WALD, HARKRADER & ROSS
Thomas H. Truitt
J. Brian Molloy
Mary Duffy Becker

IRELL & MANELLA
Thomas W. Johnson, Jr.

By: Thomas W. Johnson, Jr.
Thomas W. Johnson, Jr.

Attorneys for plaintiff
Cadillac Fairview/California, Inc.

DEMAND FOR JURY TRIAL

Plaintiff Cadillac Fairview/California, Inc. hereby demands trial by jury.

Dated: December 9, 1983.

Respectfully submitted,

WALD, HARKRADER & ROSS
Thomas H. Truitt
J. Brian Molloy
Mary Duffy Becker

IRELL & MANELLA
Thomas W. Johnson, Jr.

By: Thomas W. Johnson
Thomas W. Johnson, Jr.

Attorneys for plaintiff
Cadillac Fairview/California, Inc.

That certain real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Parcel B of Parcel Map Exemption No. 2695, as referenced in that certain Covenant and Agreement for Lot Line Adjustment recorded on April 5, 1983, as Instrument No. 83-375486, Official Records of said County, said Parcel B being more particularly described as follows:

a. That certain portion of Lot 13 and that portion of Rosemead Street (Vacated) adjoining said Lot 13 as said Lot and street are shown on that certain map entitled "Tract No. 4671" recorded in Book 56 of Maps, at Pages 30 and 31, Official Records of said County, said portion being more particularly described as that portion of Lot 13 and Rosemead Street (Vacated) lying easterly of a line parallel with and perpendicularly distant 100.00 feet westerly of the centerline of Rosemead Street (Vacated) as said lot and street are shown on said Map entitled "Tract No. 4671", excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

b. Lot 36 as said lot is shown on said Map entitled "Tract No. 4671" excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

c. The westerly 62 feet of Lot 37 as said Lot is shown on said Map entitled "Tract No. 4671", excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

Exhibit "A"

EXHIBIT

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Dames & Moore

812 Anacapa Street
Suite A
Santa Barbara, CA 93101
(805) 963-9676

June 15, 1984

Irell & Manella
1800 Avenue of the Stars
Suite 900
Los Angeles, CA 90067

Attention: Mr. Thomas W. Johnson Jr.
Attorney at Law

Gentlemen:

Interim Summary of Findings
Del Amo Site Investigation
Los Angeles, California
For Irell & Manella

Dames & Moore is pleased to submit thirty copies of our "Interim Summary of Findings, Del Amo Site Investigation, Los Angeles, California" for Irell & Manella.

If you should have any questions, please do not hesitate to contact us.

Very truly yours,

DAMES & MOORE

Arthur C. Darrow

Arthur C. Darrow
Partner

Thomas A. Vinckier

Thomas A. Vinckier
Senior Hydrogeologist

ACD/TAV/rlt
Attachment
29S/23-ltr

EXHIBIT

6.3 Ground Water Investigation Summary of Findings

6.3.1 Site Hydrogeology

- The natural deposits beneath the Del Amo site, to a depth of about 100 feet, consist predominantly of stratified, heterogenious and unconsolidated silty clays, clayey silts, and sandy silt/clay sediments. Some fine to medium grained sand is also present.

- Shallow ground water occurs beneath the Del Amo site within the Bellflower aquiclude at a depth of between 63 and 68 feet below land surface (elevation -26 to -28 feet mllw).

- The Bellflower aquiclude is not a reliable source of ground water supply due to its fine grained, low permeability deposits.

- On the basis of static water level measurements made in observation wells completed within the Bellflower aquiclude, the water table surface beneath the site slopes gently to the south-southeast at a gradient of about 0.0015 ft/ft.

- Because the horizontal water table gradient is so small, slight changes in local ground water levels may change the direction of ground water flow.

6.3.2 Shallow Ground Water Quality - Organic and Inorganic Constituents

- Three organic species were detected and confirmed to be present in at least one ground water sample by both screening and species verification tests. These species are benzene, ethylbenzene, and naphthalene.

- Benzene was detected in all four ground water samples submitted for testing (including one duplicate sample), and was verified in three of the four samples.

- A fourth ganic species, phenol, was a , detected in all four ground water samples by a single test procedure.

- Toluene was detected in three of the four ground water samples, but could not be confirmed by species verification tests. In the case of one sample #5, the failure of confirmation likely resulted from the necessary dilution of the sample prior to testing which was necessary because of the high benezene concentration.

- An assemblage of 5 polynuclear aromatic species were detected in observation well DM-2, but were not confirmed by GC/MS (Method 625) (see Table 5.2-18). At least two of these species, Acenaphthalene and Phenanthrene/Anthracene, were reported to be present in levels that should have been detectable by GC/MS. None of these species were detected in any of the other ground water samples.

- Screening tests detected relative low concentrations of 10 additional organic species in one or more of the ground water samples. None of these species could be confirmed by verification testing (see Tables 5.2-17 through 5.2-19).

- On the basis of the available data, 5 organic species appear to be present in shallow ground water beneath the site in relative high concentrations. The maximum concentrations of these species in samples from each observation well are (in ppb):

	DM-1	DM-2	DM-3
Benzene	750,000	350	9600
Ethyl Benzene	4,000	6	52
Napthalene	42	ND	4
Phenol	920	142	9.6
Toluene	2,600	9	7

- Inorganic contaminants including heavy metals and other trace elements are not present in shallow ground water beneath the Del Amo site at levels exceeding what is considered a normal background range.

References

California Department of Water Resources, 1961. Appendix A: Ground Water Geology. DWR Bulletin 104.

Ecology and Environment, Inc., 1983. Hydrogeological Assessment, Del Amo Site, Torrance, CA. Prepared for U.S. Environmental Protection Agency, San Francisco, CA.

EXHIBIT 5

CONFIDENTIAL - ATTORNEY/ .ENT
PRIVILEGED

ASSESSMENT OF POTENTIAL SOIL CONTAMINATION

20221 Hamilton Avenue
Los Angeles, California

Prepared for:

Augustini, Wheeler and Dorman
523 West 6th. Street
Suite 330
Los Angeles, California 90014

September 9, 1988

by:

EMCON Associates
27071 Cabot Road
Suite 103
Laguna Hills, California 92653
(714) 582-5324

Project No. A92-03.01

PLS. DEFT. 23
WITNESS: Wolff
DATE: 3-21-9
LINDA L. RUSSELL. NP. CSR

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INTRODUCTION

This report presents the results of an assessment of possible contamination of subsurface soils underlying a portion of the commercial property located at 20221 Hamilton Avenue, Los Angeles. The concern regarding possible soil contamination arose as a result of a preliminary soil boring drilled by others on behalf of a prospective purchaser.

EMCON Associates (EMCON) was retained on behalf of the property owner (Andrex) to perform a limited assessment of soil conditions in the northwestern corner of the property underlying the parking area. Nine soil borings were drilled to depths between 30 and 50 feet. Soil samples were obtained every five feet for purposes of logging the holes and for measurement of headspace vapors. Selected samples were submitted to an onsite mobile laboratory for determination of chemical concentrations.

The fieldwork was carried out on Friday, September 2, 1988.

The following sections of this report describe the project background, drilling and sampling procedures used, subsurface conditions, results obtained and conclusions drawn. A summary of soil sample results is included as Table 1, a site vicinity map is included as Figure 1 and a schematic diagram of the site showing boring locations is included as Figure 2. Appendices presenting the logs of borings, analytical results, and chain-of-custody documentation are attached and complete the report.

BACKGROUND

EMCON's understanding of the events leading to the subject assessment is as follows. The property is to be sold. The prospective purchaser (or purchaser's lender) engaged the services of another consulting firm to drill several soil borings on the site. These borings were for the purpose of determining whether any soil contamination problems exist prior to closing the transaction.

All but one of the borings reportedly penetrated clean soils with no detectable contamination. The one exception was a boring drilled in the northwestern corner of the property near an easement for a series of petroleum and chemical pipelines owned by Shell Oil Company. This boring reportedly encountered elevated levels of benzene (approx. 2600 ug/kg) at a depth of 15 feet. The location of this boring is shown on Figure 2.

As a result of this finding, the property owner reportedly contacted Shell who identified an abandoned benzene pipeline

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within their easement. This pipeline was reportedly abandoned sometime around 1972 and may have been filled with drilling mud to prevent further use.

To speed up resolution of the issue, Andrex decided to drill additional soil borings in the area of the previous boring and delineate any area potentially needing remediation. A second objective was to better define whether the reported benzene in the soil could be reasonably related to the benzene pipeline in the adjacent easement.

EMCON Associates was retained to perform the described work on a rush basis. To accomplish this, two drill rigs and a mobile laboratory were mobilized to the site with the objective of accomplishing the fieldwork within a one-day time frame. The drilling and sampling methodology, and analytical procedures employed are described in the following section.

SCOPE OF WORK

Nine soil borings were drilled at the locations shown on Figure 2. These borings are numbered B-1 through B-10, skipping number B-9. The reason that B-9 was skipped in the numbering scheme was simply that two drill rigs were employed simultaneously to drill the holes. One rig drilled the odd-numbered holes while the other drilled the even-numbered ones. The holes were numbered according to the sequence in which they were drilled. The rig drilling the even-numbered holes drilled one more hole than the other rig; thus, this final hole was numbered B-10 rather than B-9.

The borings were advanced by hollow-stem auger drilling. Auger flights consisted of 7.25-inch outside diameter (3.25-inch inside diameter) sections. The odd-numbered holes were drilled with a Mobile b-61 drill, while the even-numbered holes were drilled with a Mobile b-47 drill. All auger flights were steam-cleaned prior to arrival onsite, and again between borings, to prevent introduction of foreign materials to the borings or cross-contamination between borings.

Samples of soil were obtained at five-foot intervals in all borings to facilitate logging the materials encountered as well as to assess degree of contamination, if any. Relatively undisturbed samples were obtained by driving a modified California-type sampler with a down-hole hammer on a wire line lowered inside the augers. Blow counts were recorded for each sample and are presented on the logs.

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the soil samplers were steam cleaned following each sample run to prevent cross-contamination between samples. Soil materials encountered were described in detail according to the Unified Soil Classification system. These descriptions appear on the logs.

A portion of each sample was immediately placed in a Mason jar, capped with foil, and placed in a pan of water along with the other samples from the same boring in order for the temperature to equilibrate. After all samples from each hole had been allowed to equilibrate, measurements of headspace vapor concentrations were made on each sample as a screening measure to determine which samples would be submitted to the onsite laboratory.

Headspace measurements were made with a Photovac Tip photoionization detector (PID) calibrated with 100 ppm isobutylene calibration gas. It should be noted that the headspace results are only a relative indicator of the presence of volatile organic vapors and not a measure of concentrations of specific compounds in the soil. As such, these measurements can be a useful relative sample screening device but should not be relied upon as absolute indicators of the presence of contamination. One important reason for this is that vapors may have migrated through the soil from the ground water beneath, or from offsite, and thus may be an indicator of contamination at another location rather than in the sample itself. The headspace measurements are indicated on the boring logs.

Undisturbed samples were obtained in brass rings. After removing each sample from the sampler, the ring was sealed with Teflon and plastic caps, properly labelled, placed in a plastic Zip-loc bag and stored in a cooler prior to being submitted to the onsite laboratory. All brass rings used for samples were new and free of contaminants prior to sampling. Thorough chain-of custody documentation was prepared to document the handling of each sample submitted to the lab.

After completion of each hole, the hole was backfilled by either of the following methods. If the hole was clean and did not penetrate to ground water, a sack of Hole Plug (1/4-inch bentonite pellets) was placed at the bottom of the hole and charged with clean water. The remainder of the hole was then backfilled with native soil. The hole was then capped with an asphalt patch. Borings B-1 through B-5 were backfilled in this manner. If the boring contained apparent traces of hydrocarbons, penetrated to ground water, or was located close to the pipeline easement, a sack of Hole Plug was placed in the bottom of the hole, followed by a cement/sand slurry backfill. The surface was capped with an

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asphalt patch. The remaining borings were backfilled in this fashion.

Selected samples were submitted to the onsite mobile laboratory for chemical analyses. Analytical methods employed included Total Petroleum Hydrocarbons (TPH) by USEPA Test Method 8015 (modified), and TPH with distinction of benzene, toluene, ethylbenzene and total xylenes (BTEX) by USEPA test Method 8020. Sample extraction was performed in accordance with USEPA Method 5030 using a pentane extractant. Samples were analyzed by a Shimatzu Model GC 15A gas chromatograph.

The rationale for sample selection involved testing those samples registering the highest headspace measurements with the PID. In most cases this turned out to be the deeper samples in each boring.

SUBSURFACE CONDITIONS

The northwest corner of the site consists of a parking area with asphalt paving. A landscaped greenbelt area runs along the north side of the property adjacent to the parking area. The series of buried pipelines run along the north side of the parking area under the greenbelt (Figure 2).

The site is underlain by silty to sandy soil varying in color from light olive brown to yellowish brown. The sand is generally fine-grained, with varying percentages of silt and clay. The soil is generally moist and is moderately dense to dense. The upper approximately 10 feet of soil has reportedly been excavated and recompacted as part of the original site development. This appears to be born out by the blowcounts recorded for driving the modified California sampler. In general, the blowcounts appear to be higher in the upper 10 feet than in the zone between 10 and approximately 30 feet deep. This varies from hole to hole but is fairly consistent across the area drilled. In native soils, the trend is usually from less dense to more dense soils with increasing depth. The higher density, as measured by blowcounts, in the upper 10 feet strongly suggests that this zone has been recompacted.

No permeability measurements were made as a part of this assessment; however, the soils underlying the site can be expected to have moderate to high permeability depending upon such factors as percent of silt and clay, and degree of compaction. The significance of this is that any leak from a nearby pipeline would be expected to migrate fairly readily downward to the water table leaving behind only a residue of compounds adsorbed on the soil particles.

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Ground water was encountered only in boring B-7, the deepest hole, at a depth of 48.4 feet beneath ground surface. Very damp soil occurred in this boring starting at a depth of approximately 45 feet, indicating the presence of a capillary fringe above the water table. The measured water level was a quick measurement and thus may not be an accurate determination of the true depth to ground water under static conditions. The true depth probably lies somewhere between 45 and 48 feet.

The upper water-bearing zone beneath the site is believed to be of poor quality and is not used as a drinking water source based on regional information. Beneath the zone drilled for this assessment a sequence of sands, silts and clays of the Pleistocene Lakewood Formation exists. This geologic unit is reportedly on the order of 250 feet thick in the general site area, and includes the Gage and Gardena aquifers. The permeability of these units is low and there are reportedly few wells drawing from them. Beneath the Lakewood is the San Pedro Formation, which extends to a depth on the order of 900 feet. The San Pedro Formation includes the more-productive Lynwood and Silverado aquifers. The Lynwood aquifer is some 250 feet beneath the site and is reportedly overlain by a 60-foot-thick clay layer. The Silverado aquifer is deeper.

The above general descriptions of the underlying geology are based on the California Department of Water Resources publication "Planned Utilization of the Ground Water Basins of the Coastal Plain of Los Angeles County" (Bulletin 104, dated 1961).

Logs of site borings are included in Appendix A.

CHEMICAL ANALYSES

As described above, all soil samples were first screened using a PID to measure headspace organic vapor concentrations. Because too many samples were obtained using two drill rigs to test all of the samples with the mobile laboratory in one day, the PID was used to identify those samples having the highest apparent contaminant concentrations. These samples were then submitted for analysis.

As described above, samples were tested for total petroleum hydrocarbons (TPH)(modified EPA Method 8015) and for TPH with distinction of benzene, toluene, ethylbenzene and total xylenes (BTEX)(EPA Method 8020). Samples were prepared using a pentane extractant in accordance with EPA Method 5030.

EXHIBIT 5

Table 1 summarizes the results. In general, TPH values as determined by the 8015 method ranged from nondetected (ND) to 3.44 mg/kg. Benzene values above the capillary fringe as determined by the 8020 method varied from ND to 0.14 mg/kg. The measured value for benzene in boring B-7 at a depth of 45 feet was 11.7 mg/kg. Although this is a soil sample, the sample was from the capillary fringe just above the ground-water table; therefore, the value for benzene most likely reflects ground-water conditions rather than soil conditions. Toluene, ethylbenzene and total xylenes were nondetected in all samples.

Characterization of the ground water was not within the scope of this assessment, therefore, the ground-water quality beneath the site is not defined.

Certified analytical reports and chain-of-custody documentation are included in Appendix B.

DISCUSSION OF RESULTS

As can be seen from Table 1, the predominant compound identified in the site soil samples is benzene. The measured concentrations range from nondetected to 0.14 mg/kg (not including the one soil sample from the capillary fringe which had a higher concentration). These concentrations are low. Based on the headspace measurements made with the PID, it can be reasonably concluded that the other samples not tested by the onsite laboratory would have lower concentrations of benzene because the samples selected for testing were those having the highest headspace concentrations.

From the locations of the borings it is evident that the incidence of detectable benzene increases the closer one gets to the pipeline easement. It can also be seen that concentrations appear to increase with depth close to the pipeline easement. This latter finding becomes more clear when the headspace results are examined. These findings are consistent with a line leak scenario and tend to refute other potential source scenarios.

The ground water beneath the site was not addressed as a part of the present scope. In general, the ground water in this area is known to be regionally contaminated from numerous sources. There is a wealth of available data offsite which indicates that the upper water-bearing zone carries a variety of contaminants. The Cadillac-Fairview Superfund site, for example, is close to the subject site location and has been shown to be associated with offsite ground-water contamination by the regulatory agencies performing studies of it.

EXHIBIT

The significance of the facts above is that the presence of contaminants in the ground water beneath the subject site would certainly not be a surprise. This leads to the possibility that the headspace vapor measurements in the site borings may be at least in part related to vapor migration upwards from the underlying water table, rather than to contamination of the site soils themselves. This seems to be born out by the fact that in several of the borings, principally those located further from the pipeline easement, headspace measurements indicated possible contamination whereas the soil samples actually tested clean in the laboratory. Further support for this comes from the one soil sample taken in the capillary fringe (B-7 @ 45 feet) which had elevated levels of benzene most likely associated with ground-water rather than soil conditions.

The benzene pipeline which is the likely source of the contamination is thought to have been abandoned around 1972. If this is indeed the case then any leak must have occurred prior to this time. It is likely that percolation of rain water and irrigation water over the intervening years has flushed most of the benzene in the soil down to the water table. Only traces of residue from the leak would now be expected to remain in the soil, and these would occur in a local zone confined to the immediate area of the pipeline. The findings of the present study support this model.

In view of the limited extent of detected soil contamination (confined to a small area under the northwest corner of the parking area), the low concentrations found, and the fact that the ground water beneath the site is of too poor quality to be used as a drinking water resource, it is EMCON's professional judgment that there is no present threat to public health or the environment from the detected soil contamination.

CONCLUSIONS

Based on the results discussed above, the following is a summary of EMCON's principal conclusions:

1. The principal contaminant in the soil is benzene.

2. The benzene detected is at low concentrations and is localized in a small area underlying the northwest corner of the parking area.

3. The source of the benzene was the adjacent benzene pipeline owned by Shell Oil Company and operated prior to its reported abandonment in 1972.

EXHIBIT 5

4. Because the ground water in the area is of poor quality and is not a useable drinking water resource, the residual traces of benzene found do not pose a threat to public health or the environment.

5. Remediation of the soil beneath the northwest corner of the parking area does not appear to be warranted.

Should you have any questions, or if we may be of further service, please call the undersigned at (714) 582-5324.

Very Truly Yours
EMCON Associates,

M. Wolff
R.G. #3347
Director, Laguna Hills Office

Attachments:
Table 1 - Summary of Soil Sample Results
Figure 1 - Site Vicinity Map
Figure 2 - Site Plan

Appendix A - Boring Logs
Appendix B - Certified Analytical Reports and Chain-of-Custody Documentation

EXHIBIT 5

EXHIBIT 5

TABLE 1

SUMMARY OF SOIL SAMPLE RESULTS

SAMPLE Boring No.- Depth	TPH mg/kg	benzene mg/kg	toluene mg/kg	ethylbenzene mg/kg	Total xylenes mg/kg
B1-25	1.25				
B1-35	1.24				
B2-30	ND				
B2-40	3.30	ND	ND	ND	ND
B3-30	1.30				
B4-30	1.24				
B5-25	3.44				
B6-30	1.97	ND	ND	ND	ND
B7-45	-	11.7	ND	ND	ND
B8-25	1.53	0.05	ND	ND	ND
B10-25		0.14	ND	ND	ND
B10-40		0.09	ND	ND	ND

ND = not detected

EXHIBIT 6

AUGUSTINI, WHEELER & DORMAN
ALFRED E. AUGUSTINI
ROBERT M. VUKANOVICH
Pacific Mutual Building
523 West Sixth Street, Suite 330
Los Angeles, California 90014
(213) 629-8888

Attorneys for Plaintiff,
HAMILTON DUTCH INVESTORS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California general partnership, Plaintiff, vs. SHELL OIL COMPANY, a corporation, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV 89-3738WMB(Kx FIRST AMENDED COMPLAINT FOR: (1) TRESPASS; (2) NEGLIGENCE; (3) STRICT LIABILITY; (4) BREACH OF EASEMENT; (5) PRIVATE NUISANCE; (6) WILLFUL AND MALICIOUS MAINTENANCE OF THE NUISANCE

Plaintiff, for its first amended complaint, alleges:

FIRST CAUSE OF ACTION

(Trespass Against All Defendants)

1. Plaintiff, Hamilton Dutch Investors, a California general partnership, is, and at all times herein mentioned was a California general partnership, with its principal place of business located at 20101 Hamilton Avenue, Suite 3000, Torrance, California.

2. Defendant Shell Oil Company ("Shell") is, and at all times herein mentioned was, a corporation duly organized and existing under the laws of the State of Delaware, and authorized to transact and transacting, intrastate business in California.

3. The true names and capacities of defendants sued herein as Does 1 through 30, inclusive, are unknown to the Plaintiff who therefore sues such defendants by such fictitious names, and will amend this complaint to show their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the defendants designated as a Doe participated in and are in some manner responsible for the acts, damages and injuries sustained by the Plaintiff.

4. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the defendants was the agent, employee and/or successor-in-interest to each of the remaining defendants, and in doing the things herein alleged, was acting with the authority and consent of his/her principal and within the course and scope of his/her agency and/or employment.

5. Since 1987, Plaintiff is, and has been, the owner and in possession and control of certain real property located at 20221 Hamilton Avenue, City of Los Angeles, County of Los Angeles, California, and more particularly described in

Exhibit A attached hereto and by this reference made a part hereof (the "Property").

6. At all times herein mentioned, defendants had, and have, an easement over a certain 25-foot strip of the Property for the purpose of transporting oil, petroleum or any of its other products through underground pipelines (the "Easement").

7. Plaintiff is informed and believes and thereon alleges that defendants did place underground pipelines (the "Pipelines") in the Easement and transported oil, petroleum, gas and other toxic substances, including benzene, through these Pipelines. On information and belief, at all times herein mentioned, defendants had exclusive dominion and control over the Pipelines.

8. On or about August 11, 1988, Plaintiff discovered concentrations of toxic petroleum hydrocarbons, including benzene, under the Property (the "Toxic Substances"). Plaintiff was not aware and could not reasonably be expected to have been aware of the Toxic Substances prior to August 11, 1988. Plaintiff alleges that the Property has been contaminated by the Toxic Substances.

9. Plaintiff has been informed by expert consultants that defendants permitted the Toxic Substances to enter the Property through leaks from its Pipelines.

10. Defendants' conduct in permitting Toxic Substances to leak on and under the Property constituted one or more trespasses. The leakage has substantially impaired and interfered with Plaintiff's possession and enjoyment of the Property and has seriously diminished the value of the Property.

11. On or about August 30, 1988, Plaintiff notified defendants in writing that its Pipelines had leaked Toxic Substances under the Property, and requested defendants to take immediate action to remove all of the Toxic Substances thereunder. During this same period, Plaintiff also notified defendants that the presence of Toxic Substances in the Property had diminished the value of the Property and interfered with its sale and that defendants' continued refusal to remove the Toxic Substances would cause irreparable injury including lost profits and increased carrying costs due to plaintiffs inability to sell or lease the Property.

12. Defendants have refused, and continue to refuse to remove the Toxic Substances from the Property.

13. As a direct and proximate result of the trespasses created by defendants, Plaintiff has been, and will be, damaged in a sum not now precisely known, but which Plaintiff is informed and believes shall be a sum not less than $2,500,000.

14. As a further direct and proximate result of the trespasses created by defendants, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum not less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

SECOND CAUSE OF ACTION

(Negligence Against all Defendants))

15. Plaintiff repeats, realleges, and incorporates each and every allegation contained in paragraphs 1 through 11, as though fully set forth herein.

16. Defendants owed Plaintiff a duty of care to maintain the Easement in such a manner as to interfere as little as possible with the Plaintiff's full use and enjoyment of the Property.

17. Plaintiff alleges that defendants negligently and carelessly maintained the Easement by allowing Toxic Substances to leak from its Pipelines under the Property.

18. As a direct and proximate result of defendants' negligent conduct, Plaintiff has been, and will be, damaged in

a sum not now precisely known, but which Plaintiff is informed and believes shall be a sum not less than $2,500,000.

19. As a further direct and proximate result of defendants' negligent conduct, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum not less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

THIRD CAUSE OF ACTION

(Strict Liability - Ultra-Hazardous Activity Against all Defendants)

20. Plaintiff repeats, realleges and incorporates each and every allegation contained in paragraphs 1 through 11, as though fully set forth herein.

21. Plaintiff alleges on information and belief that the Toxic Substances referred to in this Complaint involve a risk of serious harm to real property and even when transported or used with the utmost care, they will likely cause serious contamination and damage as alleged above.

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22. Plaintiff alleges on information and belief that the Toxic Substances referred to in this Complaint are not, as of the time of the bringing of this lawsuit, substances in common use in the State of California.

23. Plaintiff alleges that the Toxic Substances referred to in this Complaint are so inherently dangerous that, even if used with the utmost of care, the same did directly and proximately cause grave and serious damage and contamination to the Property as previously alleged in this complaint.

24. As a direct and proximate result of defendants' transportation and use of the Toxic Substances through its Pipelines, Plaintiff has been, and will be, damaged in a sum not now precisely known, but which Plaintiff is informed and believes shall be a sum not less than $2,500,000.

25. As a further direct and proximate result of defendants' transportation and use of the Toxic Substances through its Pipelines, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum not less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

FOURTH CAUSE OF ACTION

(Breach of Easement)

26. Plaintiff repeats, realleges and incorporates each and every allegation contained in paragraphs 1 through 11, as though fully set forth herein.

27. Defendants have breached its obligation to "interfere as little as may be practicable with the . . . full use and enjoyment" of the Property, as set forth in the Easement, by allowing Toxic Substance to leak under the Property.

28. Plaintiff has performed all of its obligations under the Easement.

29. At the time of the formation of the Easement, defendants knew, or should have known, that a leak of Toxic Substances from the Easement would substantially diminish the value of the Property and substantially interfere with any future sale of the Property. As a result of defendants' breach, Plaintiff has in fact been unable to sell the Property and, as a consequence, Plaintiff has lost profits it would otherwise have received from the sale of the Property.

30. As a result of defendants' breach of the Easement, plaintiff has been damaged in a sum not now precisely

known, but which plaintiff is informed and believes shall be a sum not less than $2,500,000.

31. As a further direct and proximate result of defendants' breach of the Easement, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum to less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

FIFTH CAUSE OF ACTION

(Private Nuisance Against all Defendants)

32. Plaintiff repeats, realleges, and incorporates each and every allegation contained in paragraphs 1 through 31, as though fully set forth herein.

33. Defendants' contamination of the Property substantially interferes with and impairs Plaintiff's beneficial use of the Property and has seriously diminished the value of the Property. Said contamination constitutes a permanent and continuance nuisance under California law.

34. As a direct and proximate result of the nuisance created by defendants, Plaintiff has, and will be, damaged in a

sum not precisely known, but which Plaintiff is informed and believes shall be a sum not less than $1,500,000.

35. As a further direct and proximate result of the nuisance created by defendants, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum to less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

SIXTH CAUSE OF ACTION

(Willful and Malicious Maintenance of Nuisance Against all Defendants)

36. Plaintiff repeats, realleges, and incorporates each and every allegation contained in paragraphs 1 through 11, as though fully set forth herein.

37. During the period from August 30, 1988 to May 4, 1988, Plaintiff made repeated oral and written demands on defendants to investigate and abate the nuisance they had created.

38. With knowledge of the harmful consequences caused by their nuisance, agents and employees of defendants, acting

within the scope of their employment and with the defendants' permission and consent, intentionally and maliciously refused to inspect, monitor or abate their nuisance.

39. As a direct and proximate result of the nuisance created by defendants, Plaintiff has been, and will be, damaged in a sum not now precisely known, but the Plaintiff is informed and believes it shall be a sum not less than $2,500,000.

40. As a further direct and proximate result of defendants' malicious maintenance of their nuisance, Plaintiff has incurred, and will continue to incur, additional carrying costs for the Property, including, but not limited to, interest, taxes and insurance, all in an amount unknown to the Plaintiff at this time, but which Plaintiff is informed and believes shall be a sum to less than $1,000,000. Plaintiff will move to amend this Complaint to state such amount when the same becomes known to the Plaintiff, or on proof thereof.

41. Plaintiff further alleges that the aforementioned acts of defendants display a conscious disregard to the rights of the Plaintiff, thereby justifying the awarding of exemplary and/or punitive damages in an amount sufficient to punish defendants, and each of them, and to make an example of them.

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EXHIBIT 6

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as follows:

1. For general damages according to proof at the time of trial, but not less than $2.5 million;

2. For special damages according to proof at the time of trial, but not less than $1.0 million;

3. For punitive and/or exemplary damages according to proof;

4. For costs of suit incurred herein;

5. For interest, including prejudgment interest as permitted by law; and

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EXHIBIT 6

6. For such other and further relief as the court may deem just and proper.

DATED: July 31, 1989

AUGUSTINI, WHEELER & DORMAN
ALFRED E. AUGUSTINI
ROBERT M. VUKANOVICH

By _____
Robert M. Vukanovich

Attorneys for Plaintiff
HAMILTON DUTCH INVESTORS

EXHIBIT A

Legal Description

Lot 62 of Tract No. 4671, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 56, Pages 30 and 31 of Maps, in the Office of the County Recorder of said County.

EXCEPTING the Northerly 100 feet thereof.

RECORDING REQUESTED BY

TITLE INSURANCE & TRUST CO.

AND WHEN RECORDED MAIL TO

International Property
Development Co.
900 Wilshire Blvd., Suite 606
Los Angeles, Calif. 90017

2818

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA
47 MIN PAST 11 A.M. MAR 11 1976
Recorder's Office

#10

FEE $ 3.00 T

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO

International Property
Development Co.
900 Wilshire Blvd., Suite 606
Los Angeles, Calif. 90017

DOCUMENTARY TRANSFER TAX $ None
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE
C. L. Gilbert T Y T C.
Signature of Declarant or Agent determining tax. Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Shell Oil Company

a corporation organized under the laws of the state of Delaware

hereby REMISES, RELEASES AND QUITCLAIMS to International Property Development Co., a California corporation

the following described real property in the City of Los Angeles
County of Los Angeles, State of California, as more particularly described in Exhibit A attached.

Reserving to Grantor an easement over that certain 25-foot strip of land as more particularly set forth in Exhibit B attached hereto.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its Manager Manufacturing Complex and Assistant Secretary thereunto duly authorized.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its President and Secretary thereunto duly authorized.

Dated: FEBRUARY 23, 1976

SHELL OIL COMPANY

By T E Innocenzi
Manager Manufacturing Complex

By R G Warren
Assistant Secretary

STATE OF CALIFORNIA } ss
COUNTY OF Los Angeles

On FEBRUARY 23, 1976 before me, the undersigned, a Notary Public in and for said State, personally appeared T. E. Innocenzi known to me to be the Manager Manufacturing Complex and R. G. Warren known to me to be an Assistant Secretary of the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Melford L. Fennell

MELFORD L FENNELL
Name (Typed or Printed)

OFFICIAL SEAL
MELFORD L. FENNELL
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires JAN 2 1980

P. O. Box 4549, Carson, California 90749

EXHIBIT -91-

MAR 11 1976

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On February 23, 1976 before me, the undersigned, a Notary Public in and for said State, personally appeared T. E. Innocenzi, known to me to be the Manager Manufacturing Complex and B. G. Warren known to me to be Assistant Secretary of the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Melford L. Fennell

Melford L. Fennell

OFFICIAL SEAL
MELFORD L. FENNELL
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY

EXHIBIT 6 Exhibit A

LEGAL DESCRIPTION

RESEARCH AREA - PARCEL 1
SOUTH OF DWP 100-FOOT RIGHT OF WAY

All that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, and being a portion of Lots 61 and 62 of TRACT NO. 4671 as recorded in Book 56 of Maps at pages 30 and 31, Records of Los Angeles County, said portion being more particularly described as follows:

Beginning at the southeast corner of said Lot 62, thence along the southerly lines of Lots 62 and 61 South 89° 52' 48" West 902.13 feet; thence leaving said southerly line North 0° 15' 29" West 233.81 feet to the southerly line of the Lands of the Department of Water & Power City of Los Angeles as described in Deed recorded September 3, 1942 in Book 19574 at page 48 of Official Records of said County; thence along last said southerly line North 89° 54' 42" East 902.84 feet to the easterly line of said Lot 62; thence along said easterly line South 0° 05' 03" East 235.31 feet to the Point of Beginning.

Exhibit A

EXHIBIT 6

RESERVATION OF PIPELINE EASEMENT

Excepting and reserving unto Grantor the right of way and easement at any time and from time to time to lay and install one or more underground pipe lines, together with underground connections, fittings and appurtenances, for the transportation of oil, petroleum or any of its products, gas, water and other substances or any thereof, along, through, under and across the lands hereinafter described, and to operate, maintain, preserve, protect, repair, replace, remove, alter, change the size of and remove the same; together with the right to do such clearing and to make such excavations, cuts, and fills with mechanical and other appliances and equipment or otherwise, as may be reasonably necessary or convenient to the exercise of the rights herein reserved; together also with the right of ingress to and egress from and over said lands, from public streets adjacent to said easement at locations approved from time to time by Grantee, which approval shall not be unreasonably withheld.

The lands hereinbefore referred to are the lands situated in the County of Los Angeles, State of California, more particularly described in Exhibit B-1 attached.

The Grantor shall exercise the rights herein reserved in such manner as to interfere as little as may be practicable with the Grantee's full use and enjoyment of said lands, but Grantee shall not erect any buildings or other permanent structures or plant trees or drill or excavate over any pipe line laid pursuant to this reservation or within such distance of any such pipe line as will damage or endanger the same or interfere with the maintenance or operation thereof. Notwithstanding the foregoing, Grantor agrees to promptly replace and restore at its sole expense any plants, grass, flowers or other landscaping and any sprinkler system equipment, and any parking lot surface, curbs, driveways or similar improvements which may be damaged or disturbed by it.

Grantee and its successors and assigns hereby reserve the right and option to relocate this right of way and easement once and only once if all of the following conditions precedent to such relocation are met:

1. Grantor must be given at least 60 days' prior written notice of the new location for said easement and the proposed date on which the pipeline or lines in said easement will be relocated.

2. The relocated easement shall have priority over any deed of trust or other encumbrance which arose after the recording of this easement.

3. All costs and expenses relating to such relocation shall be borne by Grantee.

4. Prior to relocation Grantee shall prepare for execution an amendment to this easement in form and substance satisfactory to Grantor, with appropriate subordination clauses, provided that said amendment shall state that all of the terms of this easement except the relocation provision shall remain in force and that only Exhibit B of this easement is amended.

Exhibit "B"

EXHIBIT 6

Name (Typed or Printed)

Title Order No. 7492091 Accom only to Escrow or Loan No.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

MAR 11 1976

5. The new easement shall not overlap the easements which Grantor granted to Mobil Oil Corporation and Four Corners Pipe Line Company respectively in Instrument No. 9229 recorded in Book D-5696 at page 515 and Instrument No. 9228 recorded in Book D-5696 at page 510 of Official Records, Los Angeles County, California, unless Grantor has given his prior written consent to such overlap.

6. The new location and the timing for the relocation of this easement shall be mutually approved by Grantor and Grantee, and such approval shall not be unreasonably withheld by either party.

7. Grantor shall be given sufficient time, prior to actual relocation, to comply with all pertinent laws, statutes, ordinances, rules and regulations governing such relocation.

8. Once such relocation has been consummated, Grantor will quitclaim all of its right, title, and interest in the land abandoned as a result of such relocation.

Grantor and its successors and assigns hereby agree that Grantee has the right to construct and maintain, under, over, across, along, and through the right of way reserved hereby, all such rights of way, roads, rail lines, pipe lines, power lines, drainage lines and other utility lines and appurtenances thereto as may be required by Grantee from time to time provided these agreed rights shall not be exercised in a manner to unreasonably interfere with this easement.

This reservation and all the terms and provisions hereof shall bind and inure to the benefit of the respective heirs, lessees, licensees, successors and assigns of the Grantor and the Grantee.

MAR 11 1976

Exhibit "B"

EXHIBIT (Type or Stamp) 6 - 95 -

Title Order No. 7492091 Escrow Only Escrow or Loan No.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

LEGAL DESCRIPTION

RESERVED EASEMENT IN GRANTOR SHELL OIL COMPANY

Two strips of land, 25 feet in width, being a portion of Lots 12, 13, 36, 37, 61 and 62, also a portion of Rosemead Avenue, vacated, 50 feet in width, lying between said Lots 13 and 36, said lots and Rosemead Avenue being shown on the map of Tract No. 4671, recorded in Book 56 Pages 30 and 31 of Maps, in the office of the County Recorder of the County of Los Angeles, State of California, also that portion of Vermont Avenue, adjoining said Lot 37, abandoned as a public street by order of the Board of Supervisors of Los Angeles County, recorded in Book 6142 Page 206 of Official Records of said County. The north line of said 25 foot strips of land, being described as follows:

STRIP NO. 1:

Beginning at a point in the east line of said Lot 62, distant North 0° 05' 03" West 233.31 feet from the intersection of said east line and the north line of Del Amo Boulevard, 50 feet in width, said point also being on the south line of that certain 100 foot strip of land described in a deed to the Department of Water and Power of the City of Los Angeles, dated June 18, 1942, recorded September 3, 1942 in Book 19574 Page 48 of Official Records of said County; thence along said south line, South 89° 54' 42" West 1312.39 feet to the west line of said Lot 61.

STRIP NO. 2:

Beginning at a point in the west line of Vermont Avenue, 80 feet in width, distant North 1° 38' 40" West 234.12 feet from the intersection of said west line and the north line of Del Amo Boulevard, 50 feet in width, said point also being in the south line of said Department of Water and Power 100 foot wide strip; thence along said south line, South 89° 54' 50" West 1070.59 feet; South 88° 33' 06" West 880.03 feet and South 89° 58' 46" West 50.06 feet to a point in the east line of Normandie Avenue, 66 feet in width, said point being distant North 0° 04' 30" West 214.63 feet from the intersection of said east line and the north line of said Del Amo Boulevard.

Exhibit B-1

EXHIBIT 6

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 West Sixth Street, Suite 330, Los Angeles, California 90014.

On July 31, 1989, I served the foregoing document described as FIRST AMENDED COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Kevin D. O'Leary, Esq.
Shell Oil Company
10 Universal City Plaza
Suite 1850
Universal City, CA 91608

[X] (BY MAIL)

[ ] I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

[ ] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 31, 1989, at Los Angeles, California.

DEBORAH A. HOSLER
Type or Print Name

Deborah A. Hosler
Signature

EXHIBIT 6

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 West Sixth Street, Suite 330, Los Angeles, California 90014.

On July 31, 1989, I served the foregoing document described as FIRST AMENDED COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Kevin D. O'Leary, Esq.
Shell Oil Company
10 Universal City Plaza
Suite 1850
Universal City, CA 91608

[X] (BY MAIL)

[ ] I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

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Executed on July 31, 1989, at Los Angeles, California.

DEBORAH A. HOSLER
Type or Print Name

Deborah A. Hosler
Signature

AUGUSTINI, WHEELER & DORMAN
Lawyers

EXHIBIT 6

1646P/1019-01

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner_____ ☐ a _____ of _____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ Type or Print Name

_____ Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California

I am over the age of 18 and not a party to the within action; my business address is: 12100 Wilshire Blvd., Suite 700, Los Angeles, CA 90025

On April 13, 1990, I served the foregoing document described as SHELL'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; DECLARATIONS IN SUPPORT; AND, EXHIBITS

_____ on the parties in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

AUGUSTINI, WHEELER & DORMAN
523 West Sixth Street
Suite 330
Los Angeles, CA 90014

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☒ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on April 13, 1990, at Los Angeles, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

LARRY MARSEL
Type or Print Name

Larry Marsel
Signature

STUART'S EXBROOK TIMESAVER (REVISED 5/1/88)
NEW DISCOVERY LAW 2030 AND 2031 C.C.P
(May be used in California State or Federal Courts)

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER

(SPACE BELOW FOR FILING STAMP ONLY)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General Partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation, et.al. and Does 1 - 30, Defendants.	CASE NO. 89 3738 WMB (Kx) DEFENDANT SHELL OIL COMPANY'S MEMORANDUM IN OPPOSITION TO HAMILTON DUTCH INVESTORS' MOTION FOR SUMMARY JUDGMENT Date: January 14, 1991 Time: 10:00 a.m. Place: Courtroom 9 Hon. Wm. M. Byrne, Jr.

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UNITED STATES DISTRICT COURT

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HAMILTON DUTCH INVESTORS, a California General Partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation, et.al. and Does 1 - 30, Defendants.	CASE NO. 89 3738 WMB (Kx) DEFENDANT SHELL OIL COMPANY'S MEMORANDUM IN OPPOSITION TO HAMILTON DUTCH INVESTORS' MOTION FOR SUMMARY JUDGMENT

Defendants SHELL OIL COMPANY and SHELL PIPE LINE CORP. (hereinafter referred to collectively as "SHELL") file this memorandum in opposition to Plaintiff HAMILTON DUTCH INVESTORS' (hereinafter "HDI") motion for summary judgment. HDI's motion should be denied in its entirety for the reasons that:

1. SHELL's first counterclaim for equitable lien and its affirmative defense of offset are supported by HDI's (in the person of its managing partner HOWARD MANN's) prior knowledge of the possible contamination of the property with

residues reflecting the former presence of plastics manufacturing and petroleum wastes;

2. SHELL's second counterclaim for contribution (pursuant to CERCLA) and its affirmative defense of allocation of response costs (under CERCLA) are supported by HOWARD MANN's prior knowledge of the possible contamination of the property depriving him of the "innocent landowner defense" and as a matter of law because of the privity of contract and privity of estate between HDI and the depositor of the contamination (if there be any at all);

3. SHELL's affirmative defense of the bar of the statute of limitations is supported by HOWARD MANN's prior knowledge of the prior uses of the property, the contamination of the property immediately to the North of the HDI property and the contamination of the adjoining property to the West of the HDI property (lot 61) and as a matter of law for the reason that the knowledge of prior landowners (that the property was or might be contaminated) is imputed to HDI; and,

4. SHELL's affirmative defense of bar under the "War Power" of the United States is supported by the finding of Judge Pfaelzer that SHELL performed under its lease and operating agreement for operation of the butadiene plant (of which the HDI property was a part) and as a matter of law for the reason that "there is no lability on the part of the contractor for executing its [the Government's] will." Exhibit 1. Yearsley v. W.A. Ross Construction Co., 309 U.S. 18, 20-21, 60 S.Ct. 413, 84 L.Ed. 554 (1940).

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I.

STATEMENT OF THE FACTS

5. From 1943 until 1955 the HDI property was a part of a butadiene manufacturing plant. That Plant was component part of a larger 278 acre synthetic rubber manufacturing facility. Exhibit 2. The butadiene plant, its equipment, and its feedstocks were owned by the Defense Plant Corporation, a subsidiary of the Reconstruction Finance Corporation, a wholly owned corporation of the United States of America. Exhibit 1, p 4 ¶ 8. SHELL did not design or build any part of the synthetic rubber manufacturing facility. SHELL operated the butadiene plant as agent of the Defense Plant Corporation. SHELL fully performed under terms of its operating agreement and lease agreement. Exhibit 1, p. 5 ¶ 14, p. 6, ¶ 21.

6. From April 25, 1955 until December 12, 1972 SHELL owned the entire synthetic rubber manufacturing facility, which became known as the Shell Chemical Plant. On December 12, 1972 SHELL sold the plant and the realty to Cabot, Cabot & Forbes. Exhibit 3. The plant was slated for demolition. As a part of the sale Cabot, Cabot & Forbes retained Ken O'Brien & Associates to conduct soil testing. The soil tests indicated three major areas of soil contamination. Exhibit 4.

7. The vexatious issue of contaminated soil continued to bedevil Cabot, Cabot & Forbes as it attempted to sell and build at the former site of the butadiene plant. Cabot, Cabot & Forbes informed buyers about actual contamination and possible designation of the former site as a California Hazardous Waste Site. HOWARD MANN was so informed at least as

early as July 1983 in connection with his purchase of lots 63 and 64 (the parcels immediately to the North of the present HDI site). MANN was so concerned about the reports of the presence of contamination from the prior use of the site that testing was performed by IT Analytical Services. That testing of soil on the lot 63, located a mere 100 feet to the North of the HDI site confirmed the presence of Styrene, Xylene, Ethylbenzene, Toluene, and Benzene reflecting the former presence of plastics manufacturing and petroleum waste. Welsh deposition, page 20/9-37/13 and Ex 6&7. Mann depo. 55/19-56/15 and Ex 7. Mann was informed that although his lots were contaminated, the contamination did not rise to the level of a hazardous waste property as defined in Calif. Health & Safety Code § 25117.3.

8. As part of his investigation of the contamination on lots 63 and 64 Mann learned of the prior uses of lots 61, and 62. He was informed of contamination of the soil on lot 61, which forms the Western border of lot 62. Ex. 6, p 131-132, 134-136 pages 147-149.

9. From October 29, 1976 to November 30, 1984 Cadillac Fairview/California owned the HDI property. At least as early as February 24, 1981, Cadillac Fairview learned that hazardous wastes had allegedly been disposed of within 2000 feet of lot 62. On December 9, 1983 Cadillac Fairview filed an action before this court for damages arising out of its discovery. See Cadillac Fairview/California v. Dow Chemical Co., et.al. and related cross-actions, U.S.D.C. Civil No. CV 83 7996 MRP. Exhibit 5.

10. On February 26, 1987 HDI (including HOWARD MANN as

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one of the three partners) acquired lot 62 "as is" and without a shred of soil testing or analysis. Traces of contamination were detected in a portion of the subsurface soil of lot 62 on August 11, 1988. The within action was filed on March 15, 1989 in state court.

II.

ARGUMENT

A. HOWARD MANN BOUGHT WITH KNOWLEDGE OF THE PROBABLE CONTAMINATION OF THE PROPERTY AND HE WILL BE UNJUSTLY ENRICHED IF ALLOWED TO RETAIN THE BENEFITS OF SHELL'S CLEAN UP OF THE PROPERTY

11. SHELL's first counterclaim for equitable lien and its affirmative defense of offset are legally supported by the equitable doctrine of unjust enrichment. "It is of course the law that when one obtains a benefit which may not be justly retained, unjust enrichment results, and restitution is in order." Marina Tenants Assn. v. Deauville Marina Development Co., 181 Cal.App.3d 122, 134, 226 Cal.Rptr.321 (1986).

12. "'[T]he wrongful act giving rise to a constructive trust [unjust enrichment] need not amount to fraud or intentional misrepresentation. All that must be shown is that the acquisition of the property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment.'" 11 Witkin Summary of California Law (9th ed.), Trusts, §305, p. 1139.

13. In the case at bar SHELL's counterclaim based on

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unjust enrichment and its affirmative defense of offset must stand factually for the reason that there is a triable issue of material fact concerning HOWARD MANN's knowledge or reason to know of the contamination of lot 62 before he purchased it. In his declaration (in support of the instant motion) MANN swears that he had no knowledge or reason to know. In support of his statement MANN inadvertently attaches as Exhibit C a copy of a letter he acknowledges receiving on or near the date it bears that informs him that "Review * * * indicate[s] that hazardous wastes may have been disposed of on your property." Welsh depo 36/12-16 and Exhibit 6, p. 131, ¶ 2.

14. MANN was not content with the tests received from Cabot. Through Cabot he requested additional testing of lots 63 and 64. Welsh depo. 30/9-37/13 and Exhibit 6. The results of those tests identified the contaminants on lots 63 and 64 and identified them as the residues of plastics and petroleum manufacturing. Exhibit 7 . MANN's receipt of that report dated September 22, 1983 creates a triable issue as to whether MANN knew or had reason to know that a hazardous substance was deposited in the soil beneath lots 63 and 64 and by physical extension beneath lot 62, as well.

15. When MANN seized the opportunity to purchase lot 62, closing escrow in less than one month, by not conducting any environmental testing he bought a lawsuit. MANN knew or had reason to know that if post-purchase environmental testing revealed (as it had on lots 63 and 64) the presence of contaminants, MANN could always sue SHELL, let SHELL clean up the contamination and reap the benefit of the increased value

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of the property. Were SHELL's counterclaim of equitable lien and SHELL's affirmative defense of offset to be stricken then MANN would be in a position to obtain a benefit, which he may not justly retain. This court should not allow MANN to be unjustly enriched, based on his contaminated knowledge or reason to know of the contaminated property. If at trial the court determines that MANN knew or should have known then SHELL's counterclaim of equitable lien is proper to the extent that SHELL must clean up the contamination and inadvertently improve the wrongdoer's property. In the alternative SHELL's affirmative defense of offset should remain so that the wrongdoer, MANN, the MANN with guilty knowledge, not be permitted to profit by his wrong. As it is written "No one can take advantage of his own wrong." Calif. Civil Code §3517.

B. SHELL'S SECOND COUNTERCLAIM IS FOUNDED DIRECTLY ON CERCLA AND IS PROPER

16. Shell's second counterclaim is for contribution under CERCLA. It is premised on 42 U.S.C. Section 9613(f)(1) which provides:

> (1) Contribution. - Any person may seek contribution from any other person who is liable or potentially liable under section 107(a) during or following any civil action under section 106 or under section 107(a). Such claim shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal

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law. In resolving contribution claims, the court may allocate response costs among liable party using such equitable factors as the court determines are appropriate.

17. 42 U.S.C. §9613 (f) applies whenever a potentially liable person to seeks contribution against another person who is liable or is potentially liable. In the event that both are found to be liable, the court "may allocate response costs among [them] using such equitable factors as the court determines are appropriate". The liability of HDI is, of course, absolute because it is the current landowner. The liability of Shell has yet to be determined. The reason that HDI's liability is absolute is because it is the owner of the land upon which the alleged release took place. 42 U.S.C. 9607(a)(1) provides that:

> (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -
>
> (1) the owner and operator of a vessel . . . or a facility . . .
>
> shall be liable for - . . .
>
> (B) any other necessary costs of response by any other person consistent with the national contingency plan;

See Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1152-53 (9th Cir. 1989).

18. While the liability of Shell has yet to be

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established, so long as HDI's land is in fact a "facility", HDI's liability is undeniable. HDI at Page 13 of its brief argues disengeneously that since it did not deposit anything at the site, as a matter of law there is no basis for it to be held responsible for any portion of the clean-up. That position is legal incorrect. The court may apply equitable factors under 42 U.S.C. 9613(f), and in so doing look beyond the question of simply who placed the alleged waste at the site and look to other factors. The central equitable factor being MANN's knowledge that he might well be buying contaminated property and his haste to close the transaction without the very testing he insisted on in acquiring the adjoining parcels (lots 63 and 64).

19. In its memorandum HDI cites Shapiro v. Alexanderson, 741 F.Supp. 472, 479 (S.D.N.Y. 1990). The holding in that case supports SHELL's counterclaim for contribution (when the entire section quoted by HDI at page 13 of its brief is set forth); therein the court states:

> [I]f it is found, after resolution of the issues of fact material to Shapiro's [the land owners] due care, that Shapiro expended a share of the cost greater than his equitable share under the circumstances then other covered persons can be ordered to contribute towards response cost based on their degree of responsibility. Alternatively, if Shapiro is found culpable and the other covered persons are found not to be responsible for the damage, then contribution from the other covered

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persons is not warranted. The Third Circuit has described this system of contribution among covered persons for privately expended response costs as consistent with

> Congress' desire to encourage clean-up by any responsible party. If fair apportionment of expense is not assured, it is unlikely that one party will undertake remedial actions promptly when it could simply delay, awaiting a legal ruling on the contribution liability of other responsible parties. Smith Land & Improvement Corp. v. Celotex Corp., 851 F.2d at 90.

20. There is a triable issue of material fact concerning the extent of MANN's extensive knowledge of the prior use of the property as well as adjacent contamination at the time of purchase. The court cannot at this juncture say as a matter of law, that HDI is entitled to 100 percent contribution given the court's vast discretion to apportion costs equitably after a full hearing on the merits.

C. THE SECTION 9607(B)(3) DEFENSE IS NOT AVAILABLE TO HDI

21. At Page 14 of its brief HDI argues that it may avail itself of the defense set forth in 9607(b)(3) which provides that a person is exonerated of liability if the release was wholly caused by the acts of third parties and in addition:

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(b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeable result from such acts or omissions;

22. A matter of pure statutory construction, this section is obviously aimed at exonerating defendants who in properly arranging for the disposal of hazardous waste accidentally become liable under the absolute liability provisions of CERCLA. It is doubtful the section should ever be applied to exonerate a landowner since that was, any landowner who did not deposit hazardous waste on the site would be exonerated no matter his knowledge at the time of purchase. If, in fact, this section was designed to exonerate a landowner, then it would not have been necessary to add the "innocent landowner" defense of 9607(a) when the SARA amendments were enacted in 1986.

23. In three cases dealing with this defense, the courts have held that a landowner with some knowledge of what might be on his property (and the evidence amply discloses that MANN knew about the possible contamination of the property) that the landowner is not exonerated. In Smith Land & Improvement Corp. v. Celotex Corp., 851 F.2d 86 (3rd Cir. 1988); cert. denied 109 S.Ct. 837, the court rejected the doctrine of caveat emptor, as a defense to CERCLA, but specifically held that the knowledge of a purchaser is a factor to be considered in the allocation of costs. In Smith, the purchaser of land sought contribution towards clean-up expenses. The seller raised the defense of caveat emptor, and

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the trial court granted a defense Judgment. In reversing the judgment, the Court of Appeals specifically held that while caveat emptor was not a defense, the purchaser's knowledge would be a factor in allocating costs. The court stated:

> We conclude, therefore, that under CERCLA the doctrine of caveat emptor is not a defense to liability for contribution but may only be considering in mitigation of amount due. [Emphasis added] 851 F.2d at 90.

24. The court in Smith clearly held that the knowledge of a landowner at the time of purchase is relevant in determining the landowner's share of response costs.

25. Similarly, in State of N.Y. v. Shore Realty Corp., 759 F.2d 1032, 1048 (2nd Cir. 1985), over the protestations of the purchaser's innocence, the court held that owner's knowledge of the prior uses of the land would entirely preclude operation of a 9607(b)(3) defense. To quote the court:

> Shore argues that it had nothing to do with the transportation of the hazardous substances and that it has exercised due care since taking control of the site. . . many of the acts and omissions of the prior tenant operators fall outside the scope of section 9607(b)(3), because they occurred before Shore owned the property. In addition, we find that Shore cannot rely on the affirmative defense even with respect to the tenants' conduct during the period after Shore closed on the property when Shore

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evicted the tenants. Shore was aware of the nature of the tenants' activities before the closing and could have readily foreseen that they would continue to dump hazardous waste at the site. In light of this knowledge, we cannot say that the releases and threats of releases resulting of these activities were "caused solely" by the tenants or that Shore "took precautions against these foreseeable acts or omissions." 759 F.2d at 1049 [Emphasis added]

26. MANN, according to his own declaration in support of HDI's motion indicates that he had extensive knowledge of the prior uses of the property. The deposition testimony of WELSH and the correspondence received by MANN show beyond dispute that MANN was aware that a controversy existed over the extent of contamination of the surrounding properties. His knowledge puts him squarely within the holding of both Smith and Shore Realty. The third party defense of Section 9607(b)(3) is not applicable to him, and SHELL's second counterclaim should remain intact for trial.

D. MANN'S OWN PRIOR KNOWLEDGE AND THE KNOWLEDGE OF HIS PREDECESSORS COMMENCED THE RUNNING OF THE BAR OF THE STATUTE OF LIMITATIONS

27. SHELL's affirmative defense of the bar of the statute of limitations remains viable for the reason that the state of MANN's prior knowledge presents a triable issue of material fact and the knowledge of his predecessors is imputed

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to him.

28. HDI argues that Oakes v. McCarthy Co., 267 Cal. App.2d 231, 73 Cal.Rptr. 127 (1968) stands for the proposition that the three year statute of limitations for injury to land does not begin to run until there is surface damage which would put a reasonable man on notice. In Oakes, the jury was given the question of whether the hairline cracks in the patio cement in September 1956, the widening of the cracks between March and May 1958, and the repairs to remedy the puddling of water in January 1957 gave plaintiff notice the improper compaction of the soil beneath his lot sufficient to commence the running of the statute of limitations. Id. at 246-247. The court stated:

> "In situations of this kind, reasonable notice is equated to knowledge. [citations] Only when the consequential damage is sufficiently appreciable to a reasonable man may we hold an owner to a duty of expeditiously pursuing his remedies. As to when the consequential damage reached this point was question of fact.[citations] And the ultimate issue as to whether the cause of action for negligence was barred by the statute of limitations became a mixed question of law and fact." Id. at 255.

29. In the case at bar MANN's notice in September 1983 of the contamination of lots 63 and 64 (his own property) is "equated with knowledge" that the adjacent lot 62 was contaminated. As to whether his prior knowledge was sufficient to commence the running of the statute of

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limitations is a question of fact and given MANN's conflicting deposition and declaration testimony is not susceptible to decision on a motion for summary judgment.

30. HDI cites April Enterprises, Inc. v. KTTV, 147 Cal.App.3d 805, 195 Cal. Rptr.421 (1983) for the proposition that the discovery rule applies to breach of written contracts. The exception to that rule, as enunciated by the court is applicable to MANN. The court states:

> The discovery rule protects those who are ignorant of their cause of action through no fault of their own. It permits delayed accrual until a plaintiff knew or should have known of the wrongful conduct at issue [citations] In the instant case the ultimate question is whether appellant exercised reasonable diligence in discovering respondents' erasure of the tapes. "It is plaintiff's burden to establish `facts showing that he was not negligent in failing to make the discovery sooner and that the had no actual or presumptive knowledge of facts sufficient to put him on inquiry.' [citation] `[W]hether the plaintiff exercised reasonable diligent is a question of fact for the court or jury to decide.'" Id. at 832-833. [Emphasis added]

31. In the case at bar MANN has failed to excuse his negligent failure to conduct testing of the soil on lot 62 during the escrow period . MANN knew of the soil contamination of the adjoining properties. MANN had the right to conduct soil tests during the escrow period. Ex. , p. 19,

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para 6.b. MANN's self serving declaration that he did not know is insufficient to meet his burden to establish facts that he was not negligent in failing to discover the contamination in light of his knowledge of the contamination of the adjoining properties.

32. HDI cites Bradler v. Craig, 274 Cal.App.2d 466, 79 Cal.Rptr. 401 (1969) for the proposition that the test of Oakes is the only test of delayed discovery. In fact, the Bradler court cites Oakes as merely one of several alternative tests for commencement of the running of the statute of limitations. Id. at 472. The Bradler court cites the alternative standard applicable to MANN:

> Under Oakes, supra, the statute commenced to run when the consequential damage is sufficiently appreciable to a reasonable man.' Plaintiffs allege this as August 1966. Although they allege their predecessors in interest knew of the alleged defects, there is no allegation as to when the prior owners acquired such knowledge, or whether the defects caused any appreciable damage during the 18 year period before plaintiffs purchased the property. Knowledge or notice of defects or damage that came to the attention of their predecessors in interest would be imputed to plaintiffs as of the date thereof. Likewise, if the facts imposed a duty on plaintiffs' predecessors in interest, plaintiffs are chargeable with that duty as of the date the facts became known. Id. at 272 [italics

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in the original]

33. In the case at bar, MANN's predecessors, Cabot, Cabot & Forbes informed him of the allegations of contamination of lot 61 (Ex 6, p 131, ¶ 4 lot 61 "was recently excavated and regraded with clean soil"), and ordered the testing that revealed the contamination of lots 63 and 64. Ex. 7. Cabot even informed MANN that it knew of contamination as early as September 1982. Ex 6 p. 131 para 3. That knowledge was imputed to MANN and imposed a duty on him to make further inquiry. The Purchase and Sale Agreement for lot 62 gave him the right to test. (Contrary to HDI's characterization, the letter dated Aug. 26, 1983 stating that the Property does not meet the statutory criteria for designation as a "Hazardous Waste" property is not a certification that no hazardous waste is present thereon.) MANN breached his duty to inquire and SHELL's statute of limitations defense remains viable.

E. MANN IS NOT ENTITLED TO THE EXTENSION OF THE STATUTE OF LIMITATIONS BECAUSE HE KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE CONTAMINATION

34. Under 42 U.S.C. §9658 (a) (1) the state statute of limitations will not be a bar unless the limitations period has expired when counted from "the date the plaintiff knew (or reasonably should have known) that the * * * property damages were caused or contributed to by the hazardous substance * * *." 42 U.S.C. § 9658 (b) (4) (A).

34. SHELL's statute of limitations defense remains

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viable for the reason that there is triable issue of material fact concerning whether in September 1983 MANN knew or reasonably should have known of the contamination of the Property. Finally, as stated by HDI, there is no reported case making the imputation rule of Bradler v. Craig, 274 Cal.App.2d 466, 79 Cal.Rptr. 401 (1969) inapplicable to the extension provided by 42 U.S.C. § 9658 (b) (4) (A).

F. SHELL IS ENTITLED TO ASSERT ITS WAR POWERS DEFENSE FOR THE REASON THAT ITS AUTHORITY TO ACT AS AGENT FOR CONGRESS WAS VALIDLY CONFERRED

36. HDI asserts that SHELL is not entitled to maintain its War Powers affirmative defense for the reason that the operating agreement and lease with SHELL did not provide the precise specifications for SHELL's operation of the butadiene plant and [allegedly] breached its obligations under the agreements. HDI's arguments must fail for the reason that there has been a finding in Cadillac Fairview/California v. Dow, U.S.D.C. Civil No. CV 83-8034 MRP that "There is no evidence that * * * Shell * * * had not fully performed under the terms of the Operating Agreements or the Lease Agreements." (Exhibit 1, page 8, lines 15-18), and the case cited by HDI is inapposite by its own terms.

37. In Cadillac Fairview/California, Inc. v. Dow Chemical Company, supra, the issue before the court was whether SHELL was entitled to indemnity under its operating agreement and lease for any clean up costs resulting from its

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operation of the butadiene plant. Necessary to that determination as the question of strict adherence by SHELL to its agreements. On motion by SHELL for summary judgment the court found that SHELL adhered to the agreements and was therefore entitled to indemnity pursuant to the contracts. HDI has put forward no contrary evidence entitling it to a summary adjudication of breach and hence, judgment on SHELL's war powers affirmative defense.

38. HDI argues that Boyle v. United Technologies Corporation, 487 U.S. 500, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988) defeats SHELL's war powers affirmative defense for the reason that the government did not provide either design or operating specifications for the butadiene plant. HDI's argument must fail for the reasons that: (1) HDI puts forward no evidence that SHELL designed the butadiene plant, and (2) the issue before the court is not the defective design or manufacture of butadiene.

39. In Boyle, supra, the issue was the defective design of an escape hatch on a military helicopter. The court formulated a test to be applied before affixing manufacturers liability in the design and manufacture of military equipment. Boyle, supra, is inapposite for the reason that the within action does not concern the defective design or manufacture of butadiene.

40. However, the Boyle court reaffirmed the validity of the test to establish immunity by damage done to real property by contractors acting as mere agents of the government. The court stated:

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In Yearsley v. W.A. Ross Construction Co. 309 US 18, 84 L Ed 554, 60 S Ct 413 (1940), we rejected an attempt by a landowner to hold a contractor liable under state law for the erosion of 95 acres caused by the contractor's work in constructing dikes for the Government. We said that "if [the] authority to carry out the project was validly conferred, that is, if what wad done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will." Id., at 20-21, 84 L Ed 554, 60 S Ct 413. Boyle v. United Technologies Corporation, 487 U.S. 500, 506, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988).

41. In the case at bar, there is no allegation or evidence by HDI that the statutes establishing the Reconstruction Finance Administration and the Defense Plant Corporation were not lawfully enacted or that the corporations lacked the power to enter in the Lease and Operating Agreements with SHELL. In fact Judge Pfaelzer finds that all the acts were lawful. SHELL was a contractor carrying out the will of Congress and it cannot be held liable under state law for damage to the Government's property acquired some 44 years later by HDI.

42. Finally, CERLCA provides an express exception to liability arising out of an act of war. 42 U.S.C. §9607 (b)(2). Arguably SHELL's operation of the butadiene plant under contract with the Defense Plant Corporation during the

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hostilities commonly known as World War II arouse out of act of war committed on December 7, 1941.

CONCLUSION

43. There is a genuine issue of material fact as to when MANN knew or should have known of the existence of contamination of lot 62, when in September 1983 he learned that his own adjacent property was contaminated and that the adjacent property to the west had been regraded with clean soil. MANN's guilty knowledge, as a matter of law defeats HDI's motion and all of SHELL's affirmative defenses and counterclaims should remain for trial.

DATED: December 13, 1990

Respectfully submitted,

KELTNER & SCHREIBER, INC.

By _____
EDWIN C. SCHREIBER
GREGORY C. HORN
MARK SCHREIBER
Attorneys for Defendants
SHELL OIL COMPANY AND
SHELL PIPE LINE CORP.

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DECLARATION OF MARK SCHREIBER

I, Mark Schreiber, declare:

1. I am a competent person over the age of 18 years and make this declaration based upon my personal knowledge. If called as a witness at trial, I could and would competently testify to each of the matters set forth herein.

2. The copies of the deposition transcripts of Howard Mann, Steve Welsh, T.R. Williams, and L. Royce Donkle are true and exact copies of the certified copies or original transcripts.

3. The Ken O'Brien & Associates report attached as part of exhibit 4, pages 89-98 is an excerpt from the full report. The report was shown by opposing counsel to the witness, but opposing counsel chose not to mark and attach it to the deposition transcript as a deposition.

4. Exhibit 6 is a true and exact copy of exhibit 3 and 3A attached to the transcript of the Welsh deposition.

5. Exhibit 7 is a true and exact copy of exhibit 7 to the Welsh deposition transcript and exhibit F to the Mann deposition transcript.

6. Exhibit 1 is a true and exact copy of Judge Pfaelzer's order as served upon our office.

7. Exhibit 2 is a true and exact copy of the documents as certified by the U.S. Government to be true and exact in their papers and pleadings filed in Cadillac Fairview/California v. Dow Chemical Co., U.S.D.C. Civil No. 83-8034.

8. Exhibit 5 is a true and exact copy of the complaint

in Cadillac Fairview/California v. Dow Chemical Co., U.S.D.C. Civil No. 83-7996 which is the same (consolidated case) wherein Judge Pfaelzer entered her order attached as Exhibit 1 hereto.

9. Exhibit 8 is a true and exact copy of In re Sterling Steel Treating, Inc., 94 B.R. 924 (Bkrtcy.E.D.Mich. 1989).

I declare under penalty of perjury of the Laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this 13th day of December 1990.

Mark Schreiber

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MANN Depo

CERTIFIED COPY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California general partnership,

Plaintiff,

vs.

SHELL OIL COMPANY, a corporation, and DOES 1 through 30, Inclusive,

Defendants.

Case No.

CV 89-3738WMB (Kx)

DEPOSITION OF: HOWARD STEVEN MANN

MONDAY, DECEMBER 11, 1989

2:50 P.M.

Reported by:

SHARON HONG MORTEN

C.S.R. No. 7003

TEARNEY AND TEARNEY
A Professional Corporation
1950 Sawtelle Blvd., Suite 293
Los Angeles, CA 90025
(213) 477-8867

Deposition of HOWARD STEVEN MANN, the witness, taken on behalf of the defendants, on MONDAY, DECEMBER 11, 1989, 2:50 P.M., at 10 Universal City Plaza, Suite 1850, Universal City, California, before SHARON HONG MORTEN, C.S.R. No. 7003.

APPEARANCES OF COUNSEL

FOR PLAINTIFF:

AUGUSTINI, WHEELER & DORMAN
BY: ALFRED E. AUGUSTINI
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FOR DEFENDANTS:

WEST COAST LITIGATION SHELL OIL COMPANY
BY: KEVIN D. O'LEARY, ESQ.
10 Universal City Plaza
Suite 1850
Universal City, California 91608
(818) 753-2516

ALSO PRESENT:

PATRICIA C. CAGLE

E.R.T. repor..

BY MR. O'LEARY:

Q. Did you have any conversations with E.R.T. regarding the content of their report?

A. I don't remember.

Q. Did you send any letters or other documents to E.R.T. regarding the findings of their report?

A. I don't think so.

Q. Did you do anything else -- strike that.

MR. AUGUSTINI: We don't know of any other written communications between representatives of Hamilton Dutch, E.R.T., or Jackson National concerning the E.R.T. report.

BY MR. O'LEARY:

Q. Okay. To your knowledge, did E.R.T. rely on any other companies in determining its findings?

A. No.

Q. Let me show you another document that you submitted to Shell and ask you if you can identify it for me.

A. Yes.

Q. Can you tell me what that is, Mr. Mann?

A. You are referring to a memo to Andrex Development Company dated September the 22nd, 1983,

from I.T. Analytical Services. It is titled Certificate of Analysis, where five soil samples were taken by I.T. on behalf of Cabot, Cabot, and Forbes.

And it is the memo that was sent to me per Ed Ball's direction to I.T. Analytical Services. Ed Ball worked for Cabot, Cabot, and Forbes. And it says, "There is no hazardous waste on the property you are considering buying."

Q. Does that report cover the property which is the subject of this lawsuit?

A. No.

Q. But the property covered is property adjacent to the subject suit property?

A. Subject to the separation of the 50-foot Department of Water and Power easement, yes.

Q. Thank you. This report is entitled I.T. Analytical Services Report, Certificate of Analysis, dated September 22, 1983. Attached to this report in the back is a map entitled South Bay Center. Can you tell me where the subject property of this suit is located?

A. It is located at the corner of Del Amo Boulevard and Hamilton Avenue.

Q. So the space on this diagram that is blank, is that Lot 62, to your knowledge?

A. Yes.

Q. And what property did this investigation cover, to your knowledge?

A. It says on the front "Five Soil Samples -- 63-A, 63-A, 63-B, 63-B, and 64-C."

MR. O'LEARY: I will attach that as Exhibit E.

(Discussion held off the record.)

MR. O'LEARY: I would like to enter the Assignment of Interest under Agreement of Purchase and Sale as Exhibit E. The five soil samples will be Exhibit F.

(The documents referred to were marked by the CSR as Defendants' Exhibits E and F for identification and attached to and made a part of this deposition.)

BY MR. O'LEARY:

Q. Did Jackson Life plan on buying the building or leasing it at the time you had your discussions with them?

A. The offer that you have in your possession is to buy the building.

Q. And from this document, it indicates a sales price of, I believe, $7,000,000; is that correct?

A. Whatever it says on the document.

the purchase; is that correct?

A Yes.

Q And you --

A I was one of them.

Q Okay. Fine. You had some knowledge, then, that there had been past petroleum-related products, either manufacturing or in some other form, on the property in that area; correct?

A Yes.

Q Were you aware of any specific materials, chemicals, whatever, that were in the soil on the specific lots on which the Ashton Tate building was later constructed?

MR. AUGUSTINI: At what time?

MR. HORN: At any time prior to the closing of escrow in which the Ashton Tate property was purchased.

THE WITNESS: I can't tell you specifically that there were any chemicals there. I had received reports from the seller and had some testing done that enumerated the tests that had been done on the site.

BY MR. HORN:

Q Give me the names of the entities that you used to do the testing you just referred to.

A The only testing that the buyer of the property did, to my recollection, was from IT Analytical.

When he answered the last one, he made it clear that the migration question was considered. He considered that it was clean, and therefore, there wasn't a migration.

Now, if he answers that yes or no, you are in effect asking him to accept the notion that there was a migration.

Can't you ask that question in a way that separates the consideration as to whether or not it was a problem from the consideration of the fact?

MR. HORN: I have no idea what you just said.

Q Nevertheless, my question to you is when you purchased the Hamilton Dutch property, did you have a belief or were you are under the impression that there was a possibility that the material observed on the Ashton Tate building could have migrated to the Hamilton Dutch property?

A No.

Q You didn't think that there was any possibility of that?

A I already answered I considered it. I had all the information, and it wasn't an issue.

Q Did you consider performing any tests to make that determination prior to purchasing the Hamilton Dutch property?

MR. AUGUSTINI: New test?

MR. HORN: New tests on the Hamilton Dutch property.

THE WITNESS: No.

BY MR. HORN:

Q Why not?

A It wasn't necessary. I have a report --

MR. AUGUSTINI: You have answered the question.

THE WITNESS: Okay.

BY MR. HORN:

Q Why wasn't it necessary?

A It wasn't necessary because I had reports saying the property was clean.

Q The price for the Hamilton Dutch property was in the range of $5 million, is that correct, that you paid to purchase it?

A I think it was around $5,500,000.

Q And you paid that price by, in essence, assuming the then-existing loan on the property; is that correct?

A And I think --

MR. AUGUSTINI: That does not explain the entire price. I mean, it wasn't simply an assumption of debt.

BY MR. HORN:

Q Explain how it worked.

Walsh depo

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

- - -

Hamilton Dutch Investors, a California General partnership,	)	
Plaintiff,	)	
vs.	)	No. CV 893738 WMB(Kx)
Shell Oil Company, a corporation, and Does 1 through 50,	)	
Defendants.	)	

Deposition of CHARLES STEVEN WELSH, taken on behalf of Defendant, at 12100 Wilshire Boulevard, Suite 700, Los Angeles, California, commencing at 31:07 a.m., Tuesday, July 31, 1990, before Linda L. Russell, CSR #6518.

A P P E A R A N C E S:

FOR PLAINTIFF:

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Los Angeles, California 90014

FOR DEFENDANT:

KELTNER & SCHREIBER
BY: GREGORY C. HORN, ESQ.
12100 Wilshire Boulevard
Suite 700
Los Angeles, California 90025

CHARLES STEVEN WELSH,

called as a witness, being duly sworn to tell the truth, was examined and testified as follows:

EXAMINATION

BY MR. HORN:

Q. Will you state your name for the record, please?

A. Charles Steven Welsh.

Q. Have you ever had a deposition taken before?

A. No.

Q. You've had a chance to talk to Mr. Augustini before and he has filled you in a little bit on the nature of this proceeding; is that correct?

A. Yes.

Q. Is he representing you as your attorney today?

A. Yes.

Q. Let me give you just a little bit of the background about a deposition; I would like a record that you have been informed of exactly what's happening.

You understand that you have been

worked on, maybe I would say 40 to 50 percent of the time.

Q. So I'm clear, it's not 40 or 50 percent of your time, but --

A. Of the time that we do -- excuse me for interrupting. Of the time that we do look for prospective property.

Q. So roughly half of the properties is what you're saying?

A. That's correct.

Q. Are you familiar with what I have come to think of as the Andrex 2 building at Hamilton and Del Amo?

A. Yes.

Q. Andrex 2, is that a name you're comfortable calling --

A. It's actually the Andrex -- excuse me. On Hamilton, Andrex -- no, I know of the Hamilton Center and the Andrex building.

Q. The Hamilton Center is at the corner of Del Amo and Hamilton Avenue; is that correct?

A. That's correct.

Q. I'll call it the Hamilton Center, then, so we're on the same wavelength.

A. Correct.

Q. The Andrex building is where?

A. That's to the north.

Q. Directly north of the Hamilton Center building?

A. It's two parcels over. There is a right-of-way between the two.

Q. But it is north of Hamilton Avenue?

A. That's correct.

Q. Have you ever heard that building referred to as the Ashton-Tate building?

A. Yes.

Q. Did you view the Hamilton Center property prior to the time that it was purchased by -- well, I guess Andrex didn't purchase it, did it? Let me back up.

Have you ever been employed by Hamilton-Dutch Investors?

A. No.

Q. Are you aware that at some point in time Hamilton-Dutch Investors purchased the Hamilton Center property?

A. Yes.

Q. Did you view that property at any time prior to its purchase by Hamilton-Dutch Investors?

MR. AUGUSTINI: What do you mean by "view"?

escrow period was.

BY MR. HORN:

Q. It would have been what, 1987?

MR. AUGUSTINI: February, '87.

THE WITNESS: Well, what property did they own at that time?

BY MR. HORN:

Q. Yes.

A. I don't think there was any others that they owned.

Q. What we call the Ashton-Tate building or the Andrex building, who owned that in February, 1987?

A. At that time I believe it was Teachers' Insurance Company.

Q. At one time Andrex had owned it and then sold it?

A. Andrex never owned it. I think it was a partnership, as far as I can remember.

Q. Do you remember the name of the partnership?

A. No, I'd have to check my records.

Q. Do you know if Mr. Mann was one of the partners?

A. Yes.

Q. Where is your office located?

A. We're at 20101 Hamilton Avenue, Suite 2000, Torrance.

Q. Is that the Andrex building?

A. Correct.

Q. Is that on Lot 63? Are you familiar with the lot numbers in that tract?

A. Yes. Hum. The lots were combined. There is a lot tie.

Q. That's all right. Don't worry about it.

How long has your office been at 20101 Hamilton Avenue?

A. Since 19- -- God. I think it's summer of '86.

Q. Where was your office prior to the summer of '86?

A. We were at 1149 West 190th Street, Torrance.

Q. How long was your office there?

A. How long?

Q. Yes.

A. If I had to guess, I would think we were there since '84.

Q. Then prior to '84 your office was in

BY MR. HORN:

Q. At the time Mr. Mann or his partners or whatever entity was the actual purchaser purchased the building, the Andrex building, 20101 Hamilton Avenue, did you do one of these pre-purchase inspections to that property similiar to what you did on the Hamilton Center building?

A. No.

Q. Were you aware of any testing that was done in the soil for any purpose at the 20101 Hamilton Avenue property prior to its purchase by Mr. Mann or his partnership?

A. Yes.

Q. What sort of testing was done?

A. The seller performed -- it's not a soil test, Greg, in our context because a soil test to me as a contractor means testing it for soil stability, so it was a testing for dirt composition, if you will.

Q. The seller was who?

A. I believe it was Cabot, Cabot & Forbes or one of their subsidiaries.

Q. Do you have an understanding as to the purpose for that test, the dirt composition test?

A. Yes.

Q. What was the purpose?

A. Apparently someone had raised a concern about it and, of course, the sellers are told this during the escrow.

Q. Someone was concerned about what? I'm not clear.

A. Well, they were concerned that there was -- here, Greg, I'm not clear because I wasn't told the details, but during its development there was several areas of the site that were tested.

Q. When you say, "during its development," during the construction?

A. No, I'm sorry, during the development of the entire 60 or 80 acres that are there.

Q. So -- I'm really not following you, so let me back up a little bit.

Cabot, Cabot & Forbes owned 20101 Hamilton Avenue at one point in time?

A. That's correct, or one of their subsidiaries.

Q. Or one of their subsidiaries.

Was there a building on it at the time?

A. No.

Q. Who built the building there?

A. We did, Andrex Development.

Q. So after Mr. Mann or his partnership or whoever acquired it, Andrex built the building?

A. That's correct.

Q. So at the time, then, it was just raw land, there was nothing on it?

A. That's correct. It was a pre-graded site.

Q. Which means what?

A. That it's graded for compaction and drainage and then offered for sale to others.

Q. Mr. Mann raised some question as to the content of the soil; is that what caused the dirt composition test to be done?

MR. AUGUSTINI: That isn't what he testified.

MR. HORN: I'm asking him. I don't understand the question.

THE WITNESS: Will you repeat that again, please?

BY MR. HORN:

Q. What you've described as a dirt composition, there was -- that was done. At whose request was that test done, to your knowledge?

A. It was done by the seller.

Q. I know it was done by the seller, but

did someone else request the seller to do it?

A. Not that I'm aware of.

Q. Do you have an understanding from any source as to the reason why they performed this test?

A. Yes, my understanding was -- and I assumed that anybody that was in escrow, these tests were being done on the properties.

Q. So, in other words, it's your understanding that Cabot, Cabot & Forbes --

MR. AUGUSTINI: Just a second.

(Discussion off the record between the witness and Mr. Augustini.)

MR. AUGUSTINI: We'll take a break.

(The witness and Mr. Augustini leave the deposition room.)

BY MR. HORN:

Q. Let me back up one step here. What I'm trying to do is figure out what the impetus was that caused this dirt composition test to be done. You said it was done by Cabot, Cabot & Forbes; correct?

A. Correct.

Q. Was it done at the request of the buyer of the property from Cabot, Cabot & Forbes?

A. Not that I'm aware of.

Q. Was this something that Cabot, Cabot & Forbes, to your understanding, did on their own?

A. Yes.

Q. Have you learned from any source as to what their motivation was in doing that? Has anyone told you?

A. Well, I read, obviously, the documents that indicated there was an issue with one of the agencies.

Q. Do you know which document? Maybe you can look through them -- that you're referring to?

A. Sure. Howard gave me some documents that he received from the seller that I think one was from -- let's see.

MR. AUGUSTINI: Here.

THE WITNESS: Okay. No, this is -- one apparently from CC&F.

MR. AUGUSTINI: This is not a 300-page document.

MR. HORN: There are various documents in there.

THE WITNESS: Okay. These two (indicating).

BY MR. HORN:

Q. Describe what you're looking at. Give

me the date, at least.

A. One here dated August 29, '83 from Ted Tomasovich.

Q. Addressed to Howard Mann?

A. Correct.

Q. On Cabot, Cabot & Forbes stationery?

A. Correct.

MR. HORN: I'll mark that as Exhibit 3 to this deposition and attach it thereto.

(Whereupon, the aforementioned document was marked as Exhibit 3 for identification by the reporter and is annexed hereto.)

BY MR. HORN:

Q. What else are you looking at?

A. Let's see: A letter from John Hinton of the Department of Health Services to Peter Bloomer.

MR. AUGUSTINI: Let the record show that there is a stack of documents, that it has been stapled together, the first of which is the July 19, 1983 letter, the first page of which shows it was sent to Bloomer from the Department of Health Services. Then there are several other documents -- it's a package of documents which I will represent,

I believe, based on the way it was in the file, were the enclosures that are referred to in Exhibit 3, the August 29, 1983 letter from Ted Tomasovich.

MR. HORN: Thank you. We'll mark those exhibits to that letter as Exhibit 3-A and attach it to this deposition.

(Whereupon, the aforementioned document was marked as Exhibit 3-A for identification by the reporter and is annexed hereto.)

BY MR. HORN:

Q. Those are the documents that you reviewed that gave you the understanding as to why Cabot, Cabot & Forbes did this testing; is that correct?

A. Correct.

Q. Tell me what in Exhibit 3 and 3-A led you to that belief, please.

A. Well, normally --

MR. HORN: Counsel has pointed, directed you to the first paragraph of Exhibit 3.

MR. AUGUSTINI: I directed the witness to Exhibit 3 which says (reading):

"Dear Howard: On July 19, 1983 we received a letter from the Department of

Health and Services indicating that the staff had reason to believe that our property was a hazardous waste property. We disagreed vehemently and embarked on a testing program to prove we were right."

MR. HORN: That is exactly the first paragraph.

Q. That's what you're referring to --

A. Yes.

Q. -- when you came to the understanding as to the motivation of Cabot, Cabot & Forbes in doing the testing?

A. Yes.

Q. When did you first review this August 29, 1983 letter?

A. I would suspect it was sometime within the week after it was written.

Q. I notice it's addressed to Mr. Mann at Andrex Development and your name is not included as receiving a copy, so you would have received your copy from Mr. Mann?

A. Yes.

Q. Did you review the enclosures as well?

A. Greg, you know, I may have, but I really don't recall at that time.

Exhibit 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

83-8039

CADILLAC FAIRVIEW/CALIFORNIA, INC., Plaintiff, v. DOW CHEMICAL CO., et al., Defendant. AND RELATED CLAIMS.	CASE NO. CV ~~83-8023~~ MRP Consolidated with CASE NO. CV 83-7996 MRP ORDER GRANTING SUMMARY ADJUDICATION OF ISSUES; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER RE MOTIONS FOR REIMBURSEMENT OR INDEMNIFICATION

This matter came on for hearing on January 22, 1990 upon the motions of defendant, cross-claimant, counter-claimant, cross-defendant and third-party plaintiff The Dow Chemical Company ("Dow") for summary judgment and third-party defendants, cross-claimants and cross-defendants The Uniroyal Goodrich Tire Company ("Uniroyal") and The Goodyear Tire and Rubber Company ("Goodyear"), for summary adjudication of issues against the United States of America and Gerald P. Carmen (or his successor-in-interest), Administrator of the General Service Administration of the United States of America (successor-in-interest to the Defense Plant Corporation, Rubber Reserve Company,

Reconstruction Finance Corporation and the Federal Facilities Corporation) (the "Government"). Also heard on January 22, 1990 was the Government's motion for partial dismissal or summary judgment against Dow, Uniroyal, Goodyear and defendant Shell Oil Company ("Shell"). At the hearing on January 22, 1990, the Court requested additional briefing by Dow, Uniroyal, Goodyear and the Government, which was supplied by each of them, regarding application of the Anti-Deficiency Act to the issues raised in their motions. The motion of Shell for summary judgment came on for hearing on May 21, 1990. This Court having read and considered all the moving and opposing papers, as well as the supplemental briefs, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Government directed the adoption of a national rubber program in 1942 as part of the nation's war effort, including plans for development of large quantities of synthetic rubber.

2. Congress enacted the Reconstruction Finance Corporation Act (the "RFCA") in 1932, 47 Stat. 5, which created the Reconstruction Finance Corporation ("RFC") for the purpose of making loans to aid in financing agriculture, commerce, and industry.

3. Congress amended the RFCA on June 25, 1940, 54 Stat. 572, to give the RFC responsibility for financing and

stimulating production of planes, tanks, guns, and other war supplies.

4. Section 5d of the RFCA authorized the RFC, on request from the Federal Loan Administrator with the approval of the President, to create or organize subsidiary corporations with certain enumerated powers. Among those enumerated powers were the power to produce and acquire "strategic and critical materials" as defined by the President, to purchase and lease land to build and expand plants, and to purchase equipment, supplies, and machinery "for the manufacture of arms, ammunition and implements of war."

5. On June 28, 1940, President Roosevelt designated rubber as a "strategic and critical material," and the Federal Loan Administrator requested and the President approved of the creation by the RFC of The Rubber Reserve Company ("RRC") pursuant to § 5d of the RFCA as amended.

6. The RRC, created by the RFC and a wholly-owned subsidiary of RFC, was empowered pursuant to its charter to:

> Perform all acts and transact all business which is permitted legally to be done, performed, and transacted in connection with the buying, selling, acquiring, storing, carrying, producing, processing, manufacturing and marketing of natural raw or cured rubber, as well as related materials and substances; and the corporation shall have power to do all things incidental thereto and necessary or appropriate in connection therewith, including, without limitation, the power to borrow and hypothecate, to adopt and use a corporate seal, to make contracts, to acquire, hold and dispose of real and personal property necessary and incident to the conduct of its business and to sue and be sued in any court of competent jurisdiction.

EXHIBIT 1

6 Fed. Reg. 2970 (June 19, 1941).

7. On June 10, 1941, 55 Stat. 248, the RFCA was further amended to expand the RFC's powers and to authorize the RFC to "take such other actions as the President and the Federal Loan Administrator may deem necessary to expedite the National Defense Program."

8. The RFC, through its corporate subsidiaries, including the RRC, financed the nation's war-time rubber program through the borrowing power conferred upon the RFC by the RFCA as amended.

9. The RFC created the Defense Plant Corporation ("DPC") in June 1941 to hold title to various facilities used in connection with the Government's war effort.

10. In 1941, Congress passed the First War Powers Act, 55 Stat. 838, which provided that,

> The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort . . . to enter into contracts . . . and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deemed such action would facilitate the prosecution of the war.

11. On September 17, 1942, President Roosevelt issued Executive Order No. 9246, 3 C.F.R. Comp. 1938-1943 1210 (1968), pursuant to the First War Powers Act, authorizing the War Production Board to assume full responsibility for and control over the nation's rubber program.

EXHIBIT 1

12. Executive Order No. 9246 authorized the Chairman of the War Production Board to direct the RRC and other subsidiaries of the RFC "to execute such aspects of the rubber program in such manner and for such period of time as he deemed advisable."

13. Executive Order No. 9246 also directed that the RRC would serve as the agency of the Government in supervising the construction of all plants under the rubber program.

14. On April 22, 1942, Shell entered into a Lease Agreement with the DPC (the "*Shell Lease Agreement*"), pursuant to which Shell leased the real property and appurtenant facilities designated by the Government as Plancor 963.

15. On May 1, 1942, Dow entered into a Lease Agreement with the DPC (the "Dow Lease Agreement"), pursuant to which Dow leased the real property and appurtenant facilities designated by the Government as Plancor 929.

16. On May 2, 1942, the Goodyear Tire and Rubber Company of California, a predecessor-in-interest of Goodyear, entered into a lease agreement with the DPC (the "Goodyear Lease Agreement"), pursuant to which Goodyear leased the real property and appurtenant facilities designated by the Government as Plancor 611.

17. On September 1, 1943, U.S. Rubber, a predecessor-in-interest of Uniroyal, entered into a lease agreement with the DPC (the "Uniroyal Lease Agreement"),

EXHIBIT 1

pursuant to which Uniroyal leased the real property and appurtenant facilities designated by the Government as Plancor 611A.

18. The Lease Agreements all provided that "it is contemplated that the Lessee and Rubber Reserve Company . . . will, within six (6) months from the date hereof, enter into a contract for the manufacture of [styrene, butadiene, or synthetic rubber] in said plant."

19. The Dow, Shell, Uniroyal and Goodyear Lease Agreements (collectively the "Lease Agreements") provided, at Covenant Eight as to Uniroyal, Covenant Fifteen as to Shell, Covenant Eighteen as to Dow, and Covenant Nineteen as to Goodyear, that Dow, Shell, Uniroyal and Goodyear agreed to hold DPC harmless against any liability whatsoever because of accidents or injury to persons or property occurring in the operation of their respective plants.

20. In May 1942, Dow entered into a written agreement ("Dow Operating Agreement") with RRC for the operation by Dow of a government-owned styrene plant in Torrance, California, which plant was designated by the Government as Plancor 929.

21. In 1942, subsequent to entering into the Lease Agreement, Shell entered into a substantially identical written agreement ("Shell Operating Agreement") with RRC for the operation by Shell of a government-owned butadiene plant in Torrance, California, which plant was designated by the Government as Plancor 963.

EXHIBIT 1

22. On May 25, 1942, the Goodyear Tire and Rubber Company of California, a predecessor-in-interest to Goodyear, entered into a substantially identical written agreement ("Goodyear Operating Agreement") with RRC for the operation of a synthetic rubber plant in Torrance, California, which plant was designated by the Government as Plancor 611.

23. On September 2, 1943, the United States Rubber Company ("U.S. Rubber"), a predecessor-in-interest of Uniroyal, entered into a substantially identical written agreement ("Uniroyal Operating Agreement") with RRC for the operation of a synthetic rubber plant in Torrance, California, which plant was designated by the Government as Plancor 611A.

24. The Dow, Shell, Uniroyal, and Goodyear Operating Agreements (collectively, "the Operating Agreements") each provided, at Sections 1 and 2, that Dow, Shell, Uniroyal, and Goodyear were each operating their respective plants as agents for the Government, and for the account and at the expense and risk of the Government.

25. The Uniroyal and Goodyear Operating Agreements provided, in Section 11 thereof, that:

> It is understood that in the performance of [these] contract[s], [Uniroyal and Goodyear are] acting as agent for [the RRC], for the account and at the expense and risk of the latter, and that, accordingly, [Dow, Uniroyal and Goodyear] shall in no event be liable for, and shall be held harmless by [the RRC] against, any damage to or loss or destruction of property . . . or any injury to or death of persons, in any manner, arising out of or in connection with the work hereunder . . . .

EXHIBIT 1

26. The Dow and Shell Operating Agreements provided, in Section 11 thereof, that:

> It is understood that in the performance of this contract [Dow and Shell] shall in no event be liable for, but shall be held harmless by Reserve against, any damage to or loss or destruction of property (whether owned by Reserve, Defense Plant Corporations, or others) or any injury to or death of persons, in any manner, arising out of or in connection with the work hereunder . . . .

27. The Operating Agreements recited that they were entered into by RRC pursuant to Section 5d of the RFCA in order to aid the Government in its national defense program and pursuant to the RFC's power to create corporations to produce strategic and critical materials as defined by the President, such as synthetic rubber.

28. There is no evidence to indicate that Dow, Shell, Uniroyal, and Goodyear, or any of them, had not fully performed under the terms of the Operating Agreements or the Lease Agreements.

29. In its answer, counterclaim and cross-claims served in this action, the Government has appeared and defended this action on behalf of the United States General Services Administration (the "GSA") and as and on behalf of the United States of America, and has sought affirmative relief in that capacity, and has both sued and consented to be sued in that capacity.

30. In 1945, by Joint Resolution of Congress, dated June 30, 1945 (chapter 215, 59 Stat. 310), the DPC and RRC were dissolved and their functions, duties, and liabilities

transferred to the RFC, "with the [RFC] to assume and be subject to all liabilities . . . of the corporations dissolved . . . ."

31. As of July 1, 1954, the Department of the Treasury directed that the Federal Facilities Corporation assume "the performance on behalf of the Government of all existing contracts and the exercise of all existing rights held by the Reconstruction Finance Corporation in connection with the Government's synthetic rubber and tin programs." F. R. Doc. 54-5109, filed June 30, 1954. Such action was authorized by Executive Order No. 10539, 19 F.R. 3827, June 24, 1954.

32. In 1961, the Federal Facilities Corp. was dissolved, and Congress provided that all claims surviving the dissolution must be brought solely against the United States. Pub. L. No. 87-190, 75 Stat. 418, 419.

33. Any Conclusion of Law that is deemed to be a Finding of Fact is incorporated herein by reference as such.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this litigation pursuant to the provisions of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., particularly §§ 9613(b) and 9607(e).

2. The Tucker Act, 28 U.S.C. § 1346, does not deprive the Court of jurisdiction over the claims of Dow, Shell, Uniroyal and Goodyear against the Government for contractual

indemnification because such claims are proper under the doctrine of recoupment. See EEOC v. First National Bank, 614 F.2d 1004, 1008 (5th Cir. 1980), cert. denied, 450 U.S. 917 (1981).

3. CERCLA does not bar claims or actions for contractual indemnification based on pre-CERCLA indemnification agreements. See United States v. Conservation Chemical Co., 653 F. Supp. 152, 240 (W.D. Mo. 1986).

4. The Anti-Deficiency Act ("ADA"), 31 U.S.C. § 1341, provides that a Government contract or obligation is not limited to amounts appropriated therefor where the contract or obligation was otherwise authorized by law.

5. The RRC was authorized by law to implement and carry out the nation's rubber program pursuant to the First War Powers Act as implemented by Executive Order No. 9246, including indemnification for liabilities incurred by Dow, Shell, Uniroyal and Goodyear pursuant to the Operating Agreements. See Johns-Manville Co. v. United States, 12 Cl. Ct. 1, 23-24 (1987).

6. Executive Order No. 9001, 3 C.F.R. Comp. 1938-1943 1054 (1968), by which the War Department, Navy Department and United States Maritime Commission were authorized to exercise their powers under the First War Powers Act only "within the limits of the amounts appropriated therefor," was never extended to apply to the War Productions Board, the RFC, the RRC or the DPC.

EXHIBIT 1

7. The interpretation of the Lease and Operating Agreements is governed by federal law, because they were entered into pursuant to authority conferred by federal statute and the Constitution. U.S. v. Seckinger, 397 U.S. 203, 209-10 (1970); U.S. v. Allegheny County, 322 U.S. 174, 182-83 (1944).

8. The application of unambiguous contract terms is a matter of law.

9. Any sum that Dow, Shell, Uniroyal, or Goodyear has paid or may be obligated to pay in this action in connection with the investigation or remediation of contamination by any hazardous substance constitutes liability for damage to or loss or destruction of property or injury to or death of persons against which Dow, Shell, Uniroyal and Goodyear must be held harmless by the Government pursuant to Section 11 of the Operating Agreements.

10. If Dow, Shell, Uniroyal or Goodyear are found liable for any sums in this action, including but not limited to investigative, cleanup, remediation or response costs, the Government must hold Dow, Shell, Uniroyal and Goodyear harmless against any such sums paid.

11. The Government has produced no evidence that Dow, Shell, Uniroyal and Goodyear did not discharge each of their respective obligations pursuant to the Operating Agreements and Lease Agreements and did not satisfy all conditions precedent to the Government's indemnity obligations under the Operating Agreements.

EXHIBIT 1

12. The Operating Agreements and Lease Agreements are authentic and admissible and received in evidence.

13. The only reasonable interpretation of the Operating Agreements and Lease Agreements when read together on the subject of indemnity, is that, while they shifted responsibility for indemnity from the DPC to the RRC, the Government is in all events ultimately liable for indemnity to Dow, Shell, Uniroyal and Goodyear in this action.

14. The United States is liable as successor-in-interest for RRC and RFC, in that assets, liabilities and contracts of RRC and RFC were transferred to the Federal Facilities Corporation, and then to the United States.

Therefore, IT IS HEREBY ORDERED that:

1. Dow's motion for summary adjudication of issues is granted.

2. Shell's motion for summary adjudication of issues is granted.

3. Uniroyal's motion for summary adjudication of issues is granted.

4. Goodyear's motion for summary adjudication of issues is granted.

5. The Government's motion for partial dismissal or summary judgment of claims brought by Dow, Shell, Uniroyal, and Goodyear is denied.

6. The Government's cross-claims against Dow, Shell, Uniroyal, and Goodyear for indemnity and contribution

pursuant to the Lease Agreements are dismissed with prejudice.

IT IS FURTHER ORDERED that,

1. Dow and Shell be granted leave to amend their counterclaims to specifically state the contractual ground of their claim for indemnification; and

2. On or before July 13, 1990, Dow, Shell, Uniroyal and Goodyear shall by motion present admissible evidence by way of declarations and exhibits regarding any costs or expenses for which Dow, Shell, Uniroyal and Goodyear seek indemnity pursuant to this order, and that the Court will hear such claims on August 6, 1990 at 11:00 a.m.

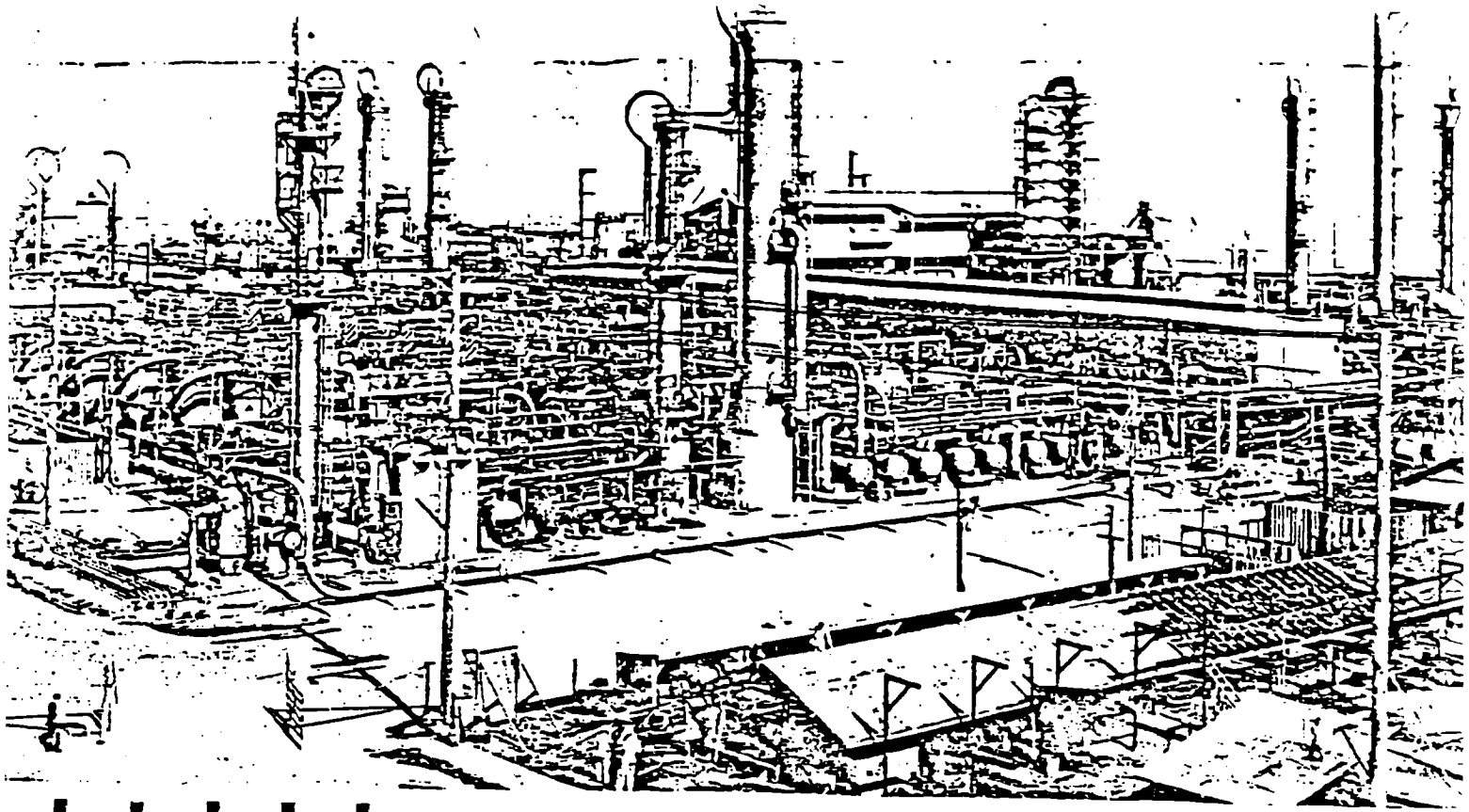
DATED: June 29, 1990

Mariana R. Pfaelzer
United States District Judge

EXHIBIT 1

EXHIBIT

Ex 2



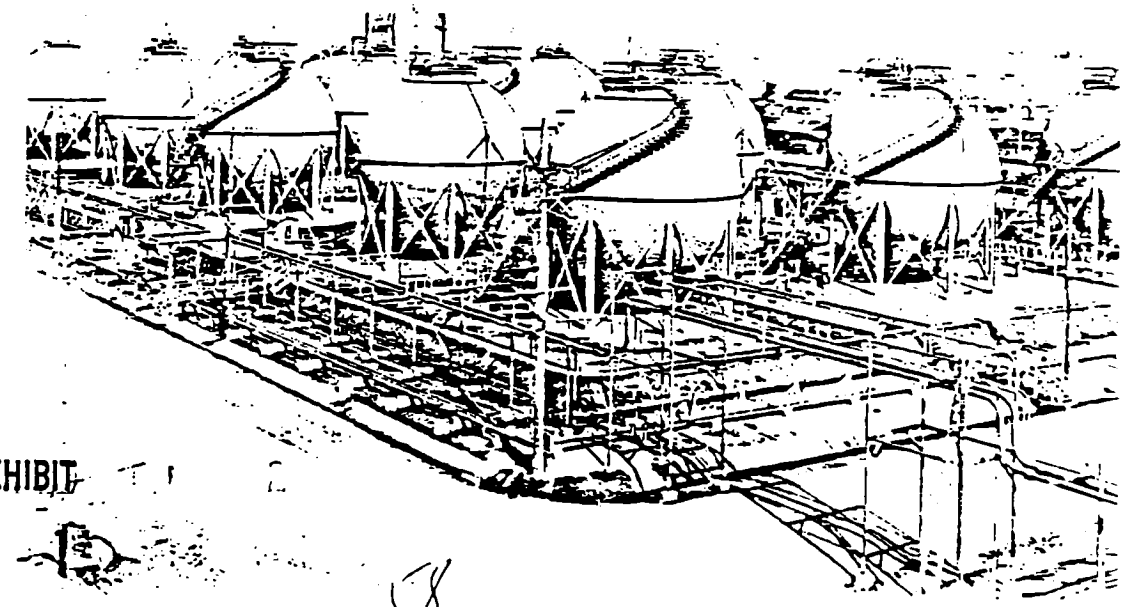
PURIFICATION ARE

BUTADIENE PLANT
LOS ANGELES, CALIF.

PLANCOR 963

PLANCOR 963

STORAGE SPHERES



PROPERTY OF
DEFENSE PLANT
CORPORATION

A SUBSIDIARY OF RECONSTRUCTION
FINANCE CORPORATION

EXHIBIT

58

DEFENSE PLANT CORPORATION

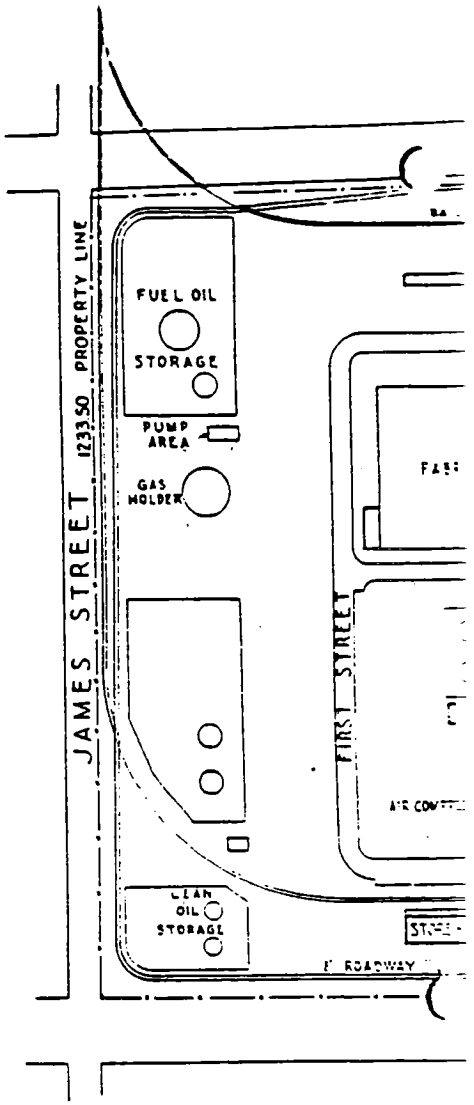
811 VERMONT AVENUE, N. W.

Washington 25, D. C.

GENERAL DATA

PLANCOR 963

BUTADIENE PLANT



LOCATION — Los Angeles, California.

LAND — Site consists of approximately 95.0 acres adjacent to Plancors 611 and 929.

PLANT — Consists of land, building, machinery, and equipment designed for the manufacture and purification of Butadiene from petroleum products.

The rated capacity of this plant is 30,000 short tons of Butadiene production per annum and the purification of 60,000 short tons of Butadiene per annum.

The *Production Area* comprises approximately 55.0 acres with process steps for dehydrogenation and purification of butylene feed stock and a purification unit for Butadiene with the following buildings necessary for complete production: six Control Houses; a Compressor Building; a Boiler House; a Filter Building; a Water Treatment Building, together with other smaller service buildings totaling approximately 40,000 sq. ft. of floor area.

Production equipment includes tanks, vessels, heat exchangers, condensers, furnaces, vaporizers, blowers, fractionating towers, water coolers, cooling towers, converters, pumps, and other smaller equipment including instruments.

The *Administrative Area* comprising approximately 15.0 acres consists of an Administrative and Laboratory Building; a Garage and Fire Station; a Guard House; a Cafeteria Building; a Change House; a Store House; a Shops Building; an Equipment Building, totalling approximately 60,000 sq. ft. of floor area. Office furniture, fixtures, laboratory and other equipment included.

All buildings are permanent type structures.

Adequate storage is provided in steel tankage for finished product. Feed stock is provided by a pipe line system from adjacent refineries.

Steam Boiler Plant comprises 8 Yarrow Water Tube Marine Type Boilers, each having capacity of 50,000 lbs. steam per hour. Each boiler is equipped with all accessories.

UTILITIES — *Water* for processing and domestic use is supplied by the Department of Water and Power of the City of Los Angeles. Boiler feed water is supplied by the Dominguez Land and Water Company.

Sewers—All sanitary sewers connect with main trunk line of County Sanitation District. Process wastes are carried to a skimming basin, thence into a drainage ditch and trap where effluent is further disposed.

Electricity—Power and light current is provided by Dept. of Water and Power of City of Los Angeles at 13,800 volts to Plancor sub-station where it is further reduced to 2,300 volts and then distributed to process areas where it is further reduced to 440 220 volts for power and 110 volts for lights; current is 60 cycle.

Natural Gas is supplied by the Southern California Gas Company. Standby of propane gas is maintained.

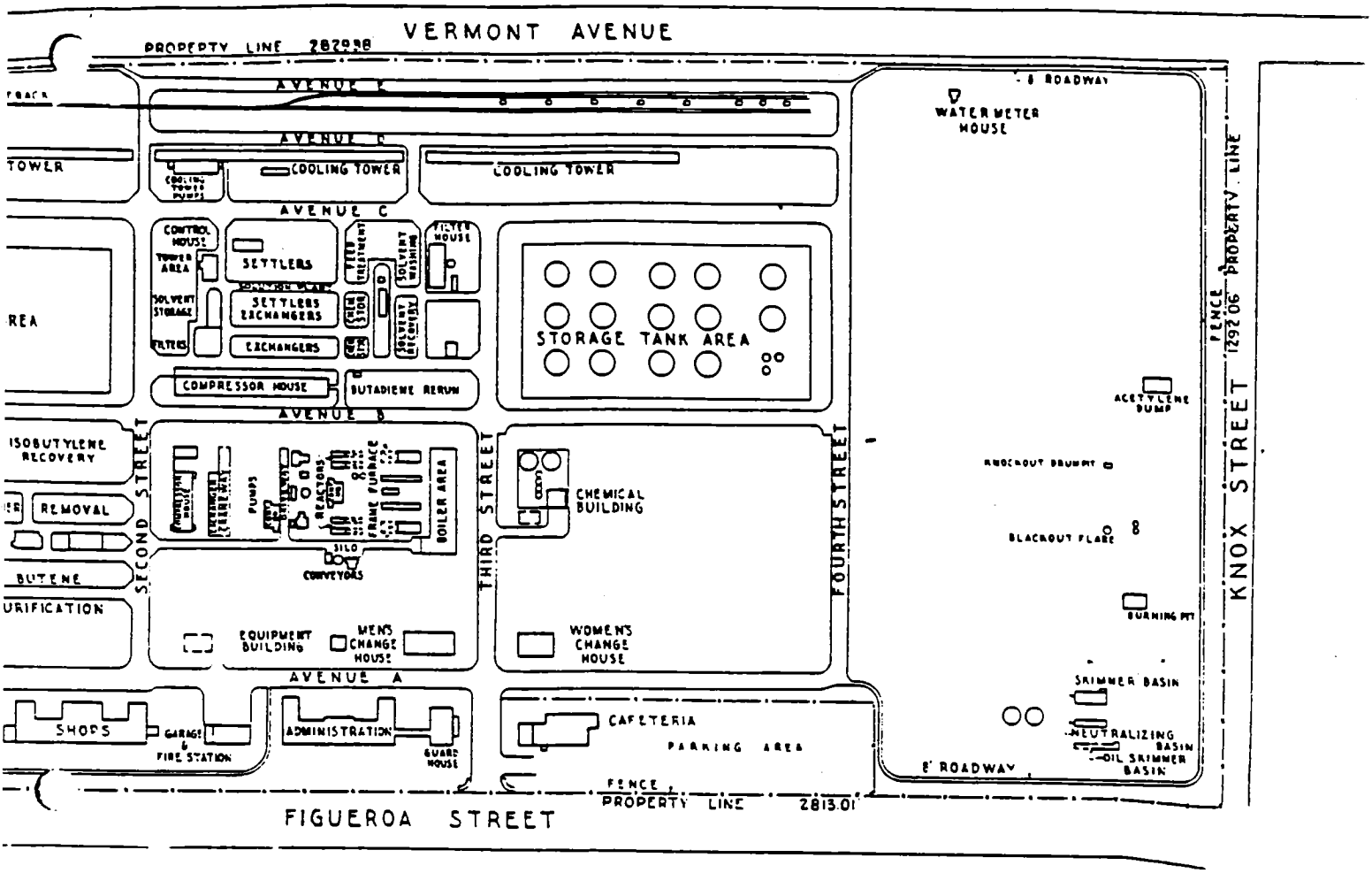
TRANSPORTATION — *Railroad*—Plant is served by the Pacific Electric Railway which connects with the Southern Pacific Railroad.

Water—Los Angeles Harbor 9 miles away.

Highways—Plant fronts on arterial highway, namely, Figuera Street, connecting Los Angeles proper.

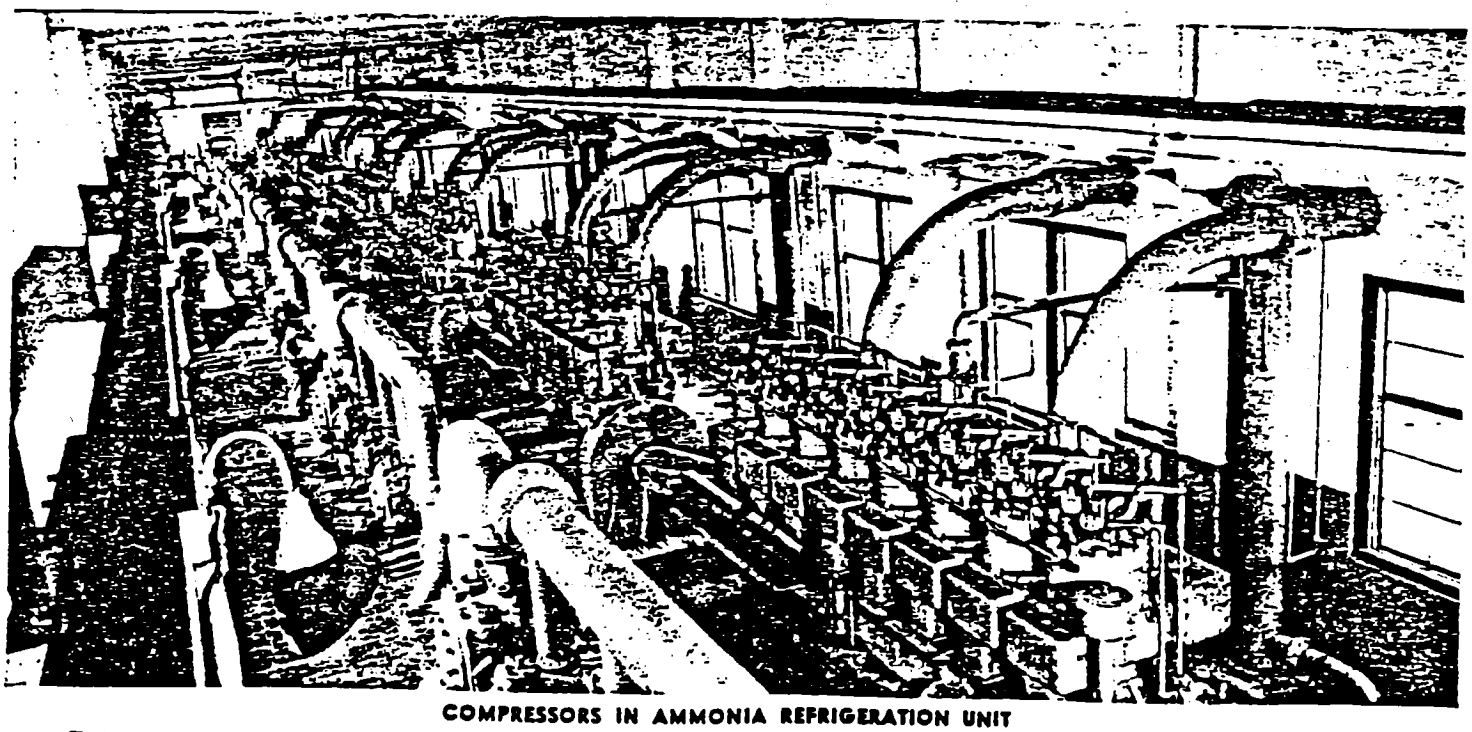
Airport—Plant site is approximately eight miles from Los Angeles Municipal Airport and ten miles from Long Beach Airport.

EXHIBIT 15



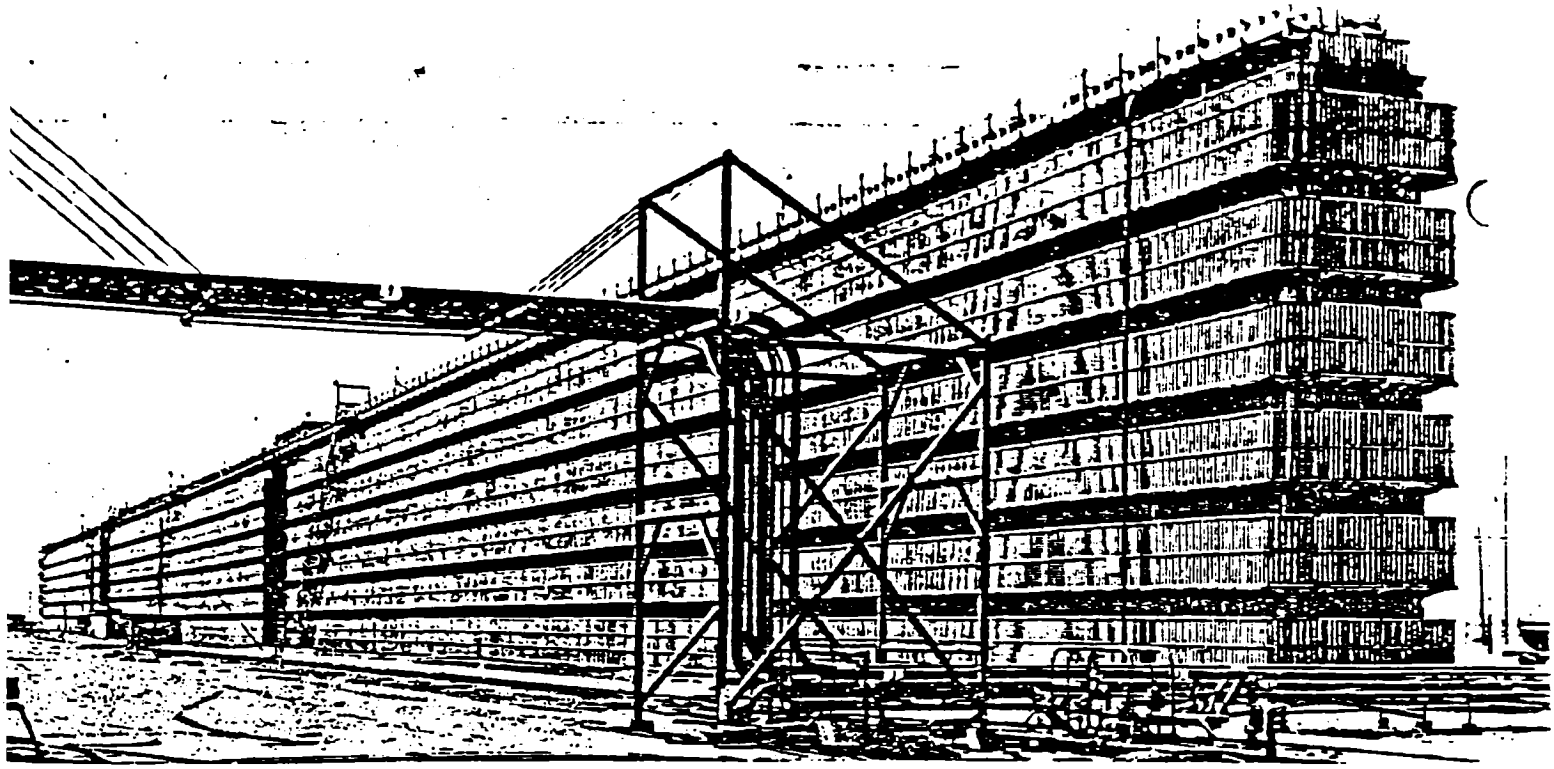
PLANT LAYOUT

SCALE IN FEET

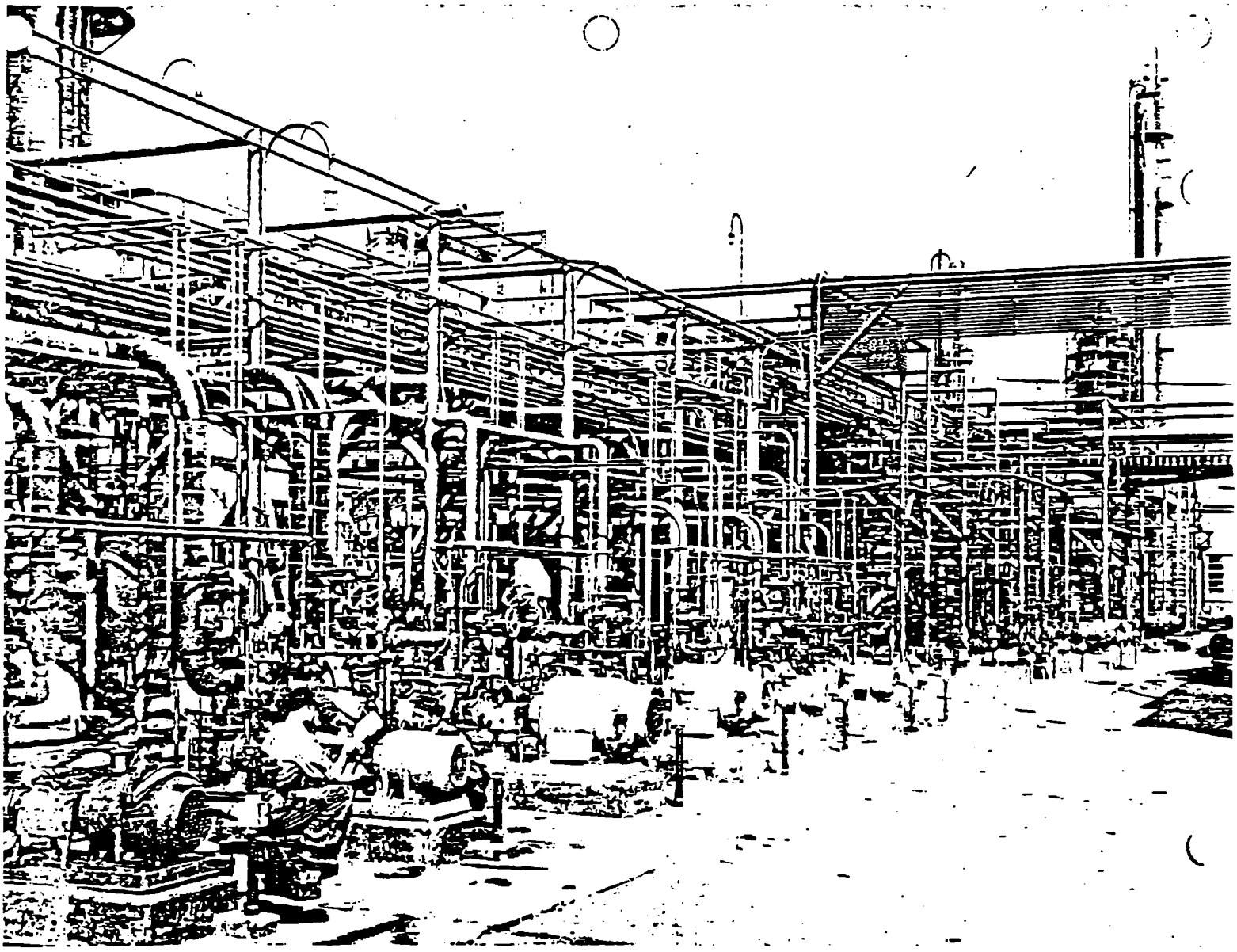


COMPRESSORS IN AMMONIA REFRIGERATION UNIT

EXHIBIT



COOLING TOWER

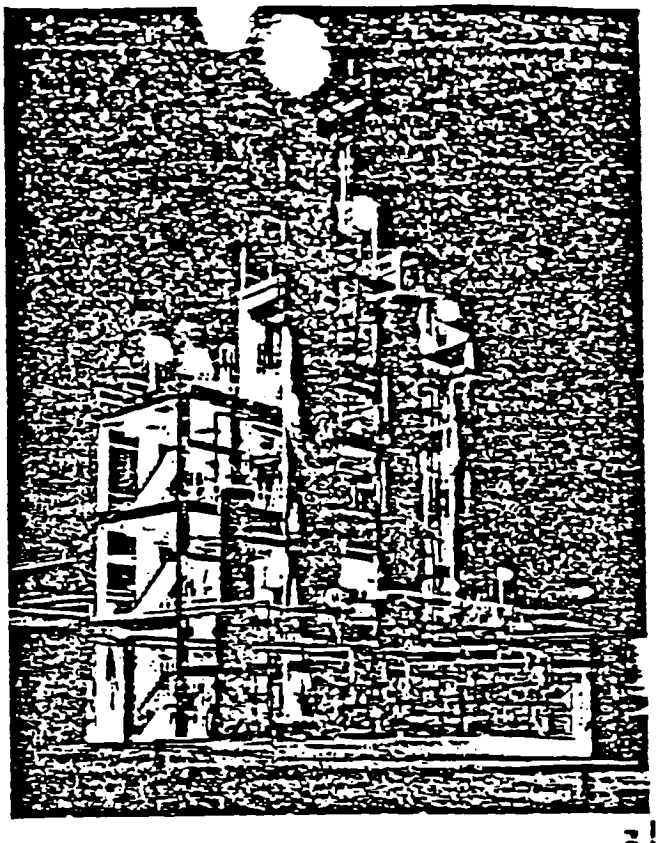


EXHIBIT

STYRENE PLANT

LOS ANGELES, CALIFORNIA

PLANCOR 929

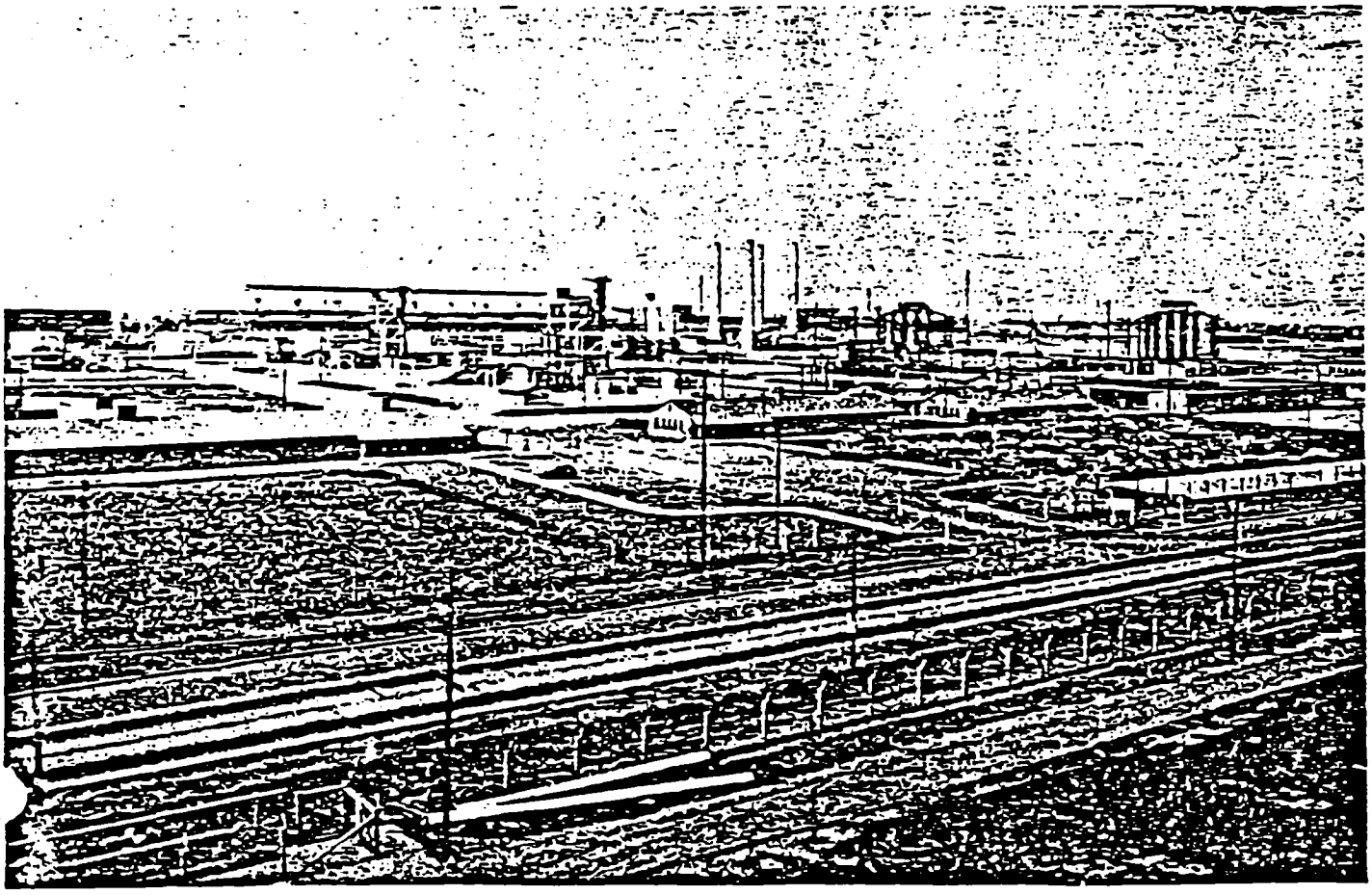


NIGHT VIEW—ETHYL BENZENE UNIT

PLANCOR 929

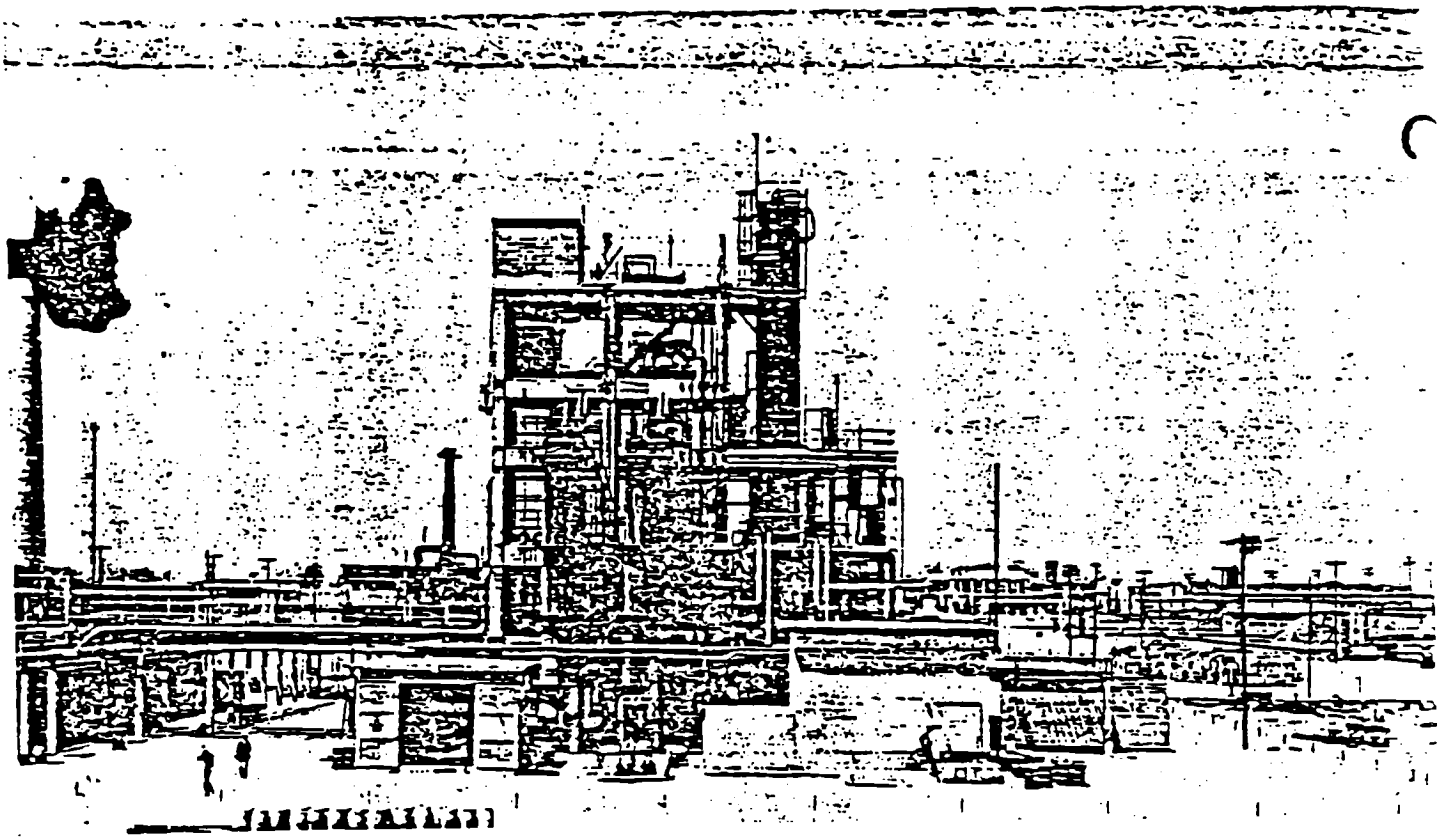
PROPERTY OF DEFENSE PLANT CORPORATION

A SUBSIDIARY OF RECONSTRUCTION FINANCE CORPORATION

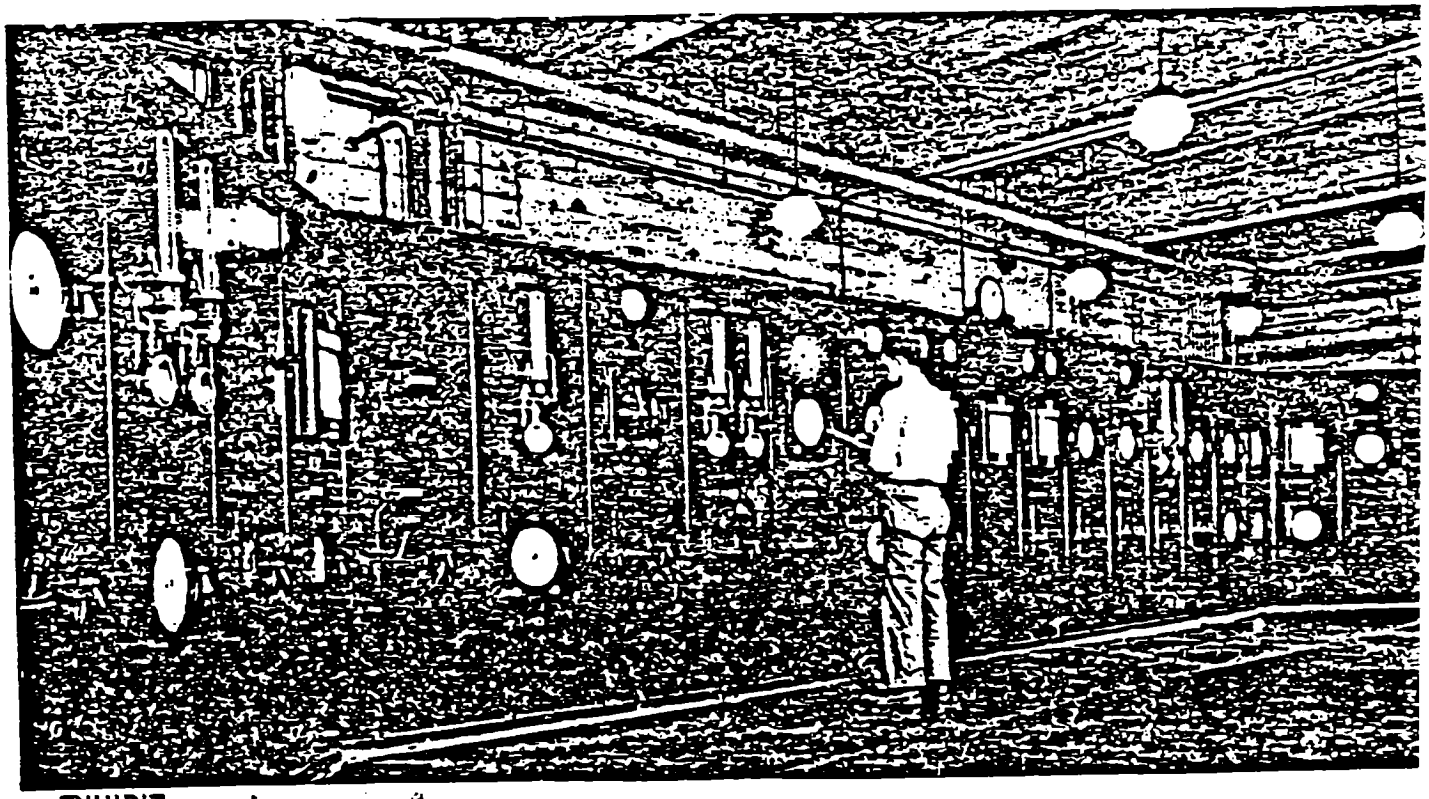


EXHIBIT

LOOKING NORTHWEST TOWARD PLANT



ETHYL BENZENE UNIT



EXHIBIT

CONTROL ROOM—ETHYL BENZENE CRACKING UNIT

DEFENSE PLANT CORPORATION

811 Vermont Avenue, N. W.

Washington 25, D. C.

GENERAL DATA
PLANCOR 929
STYRENE PLANT

LOCATION: Los Angeles, California.

LAND: Site consists of 105.583 acres of which approximately 92 acres are fenced and form main plant. Remainder is unoccupied except for trackage used for switching purposes to Plancors 963 and 611 which are adjacent to Plancor 929.

Approximately 9 acres within fenced portion can be used for additional expansion or storage.

PLANT: Consists of land, buildings, machinery, and equipment for the manufacture of Styrene from grain alcohol.

The rated capacity of this plant is 25,000 short tons of Styrene per annum but due to a limited demand for Styrene at the Copolymer plants this Plancor has been curtailed to approximately 60% of production capacity.

The *Production* Area comprises an Ethylene plant with Control House, Compressor House, Switch and Transformer House and Alcohol Recovery Unit. Ethyl-Benzene Plant, two Trains, each with Hydrochloric Acid Plant and Catalyst House; Ethyl-Benzene Cracking Plant, two Trains, each with Control and Charge House; Styrene Finishing Plant, two Trains each, with Control and Switch House, totalling 60,422 sq. ft. floor area.

Production Equipment includes fractionating towers, heat exchangers, pumps, both centrifugal and steam driven, pressure vessels, steam superheaters, and other smaller equipment.

The *Administrative* Area comprises an Office and Laboratory, a Cafeteria, a Garage and Fire Station, a Carpenter and Paint Shop, a Machine Shop, totalling approximately 90,800 sq. ft. floor area. Laboratory equipment and office furniture and fixtures included.

All structures are of permanent type.

The *Storage* Area comprises steel tankage for all raw and finished liquid materials, in adequate amount.

Steam Boiler Plant comprises ten low pressure converted naval destroyer boilers and two modern high pressure boilers, Babcock and Wilcox, with a designated capacity with gas firing of 500,000 lbs./hr. low pressure (200 lbs.) steam and 50,000 lbs./hr. high pressure (400 lbs.) steam. Generating capacities are slightly reduced when oil firing is used. The plant provides steam at low pressure at the rate of 380,000 lbs./hr. for Plancor 929 and 180,000 lbs./hr. to Plancor 611, and an additional 15,000 lbs./hr. to this Plancor 929 in special process applications.

Boiler feed water is supplied to the boilers from a Water Treatment Plant.

UTILITIES

Water—Boiler feed water is supplied by Dominquez Land and Water Co. in maximum amount of 1,000 g.p.m. and further processed at Water Treatment Plant.

Water for process, fire protection, and domestic use is furnished by Dept. of Water and Power of City of Los Angeles. Maximum requirements 2,000 g.p.m.

Sewers—All sanitary sewers connect with main trunk line of County sanitary sewer.

Electricity—Power and light current is provided by Dept. of Water and Power of City of Los Angeles at 13,800 volts to Plancor sub-station where it is further reduced to 2,300 volts and then distributed to process areas where it is further reduced to 440 volts for power and 110 volts for lights; current is 60 cycles.

Natural Gas—Supplied by the Southern California Gas Co.

TRANSPORTATION:

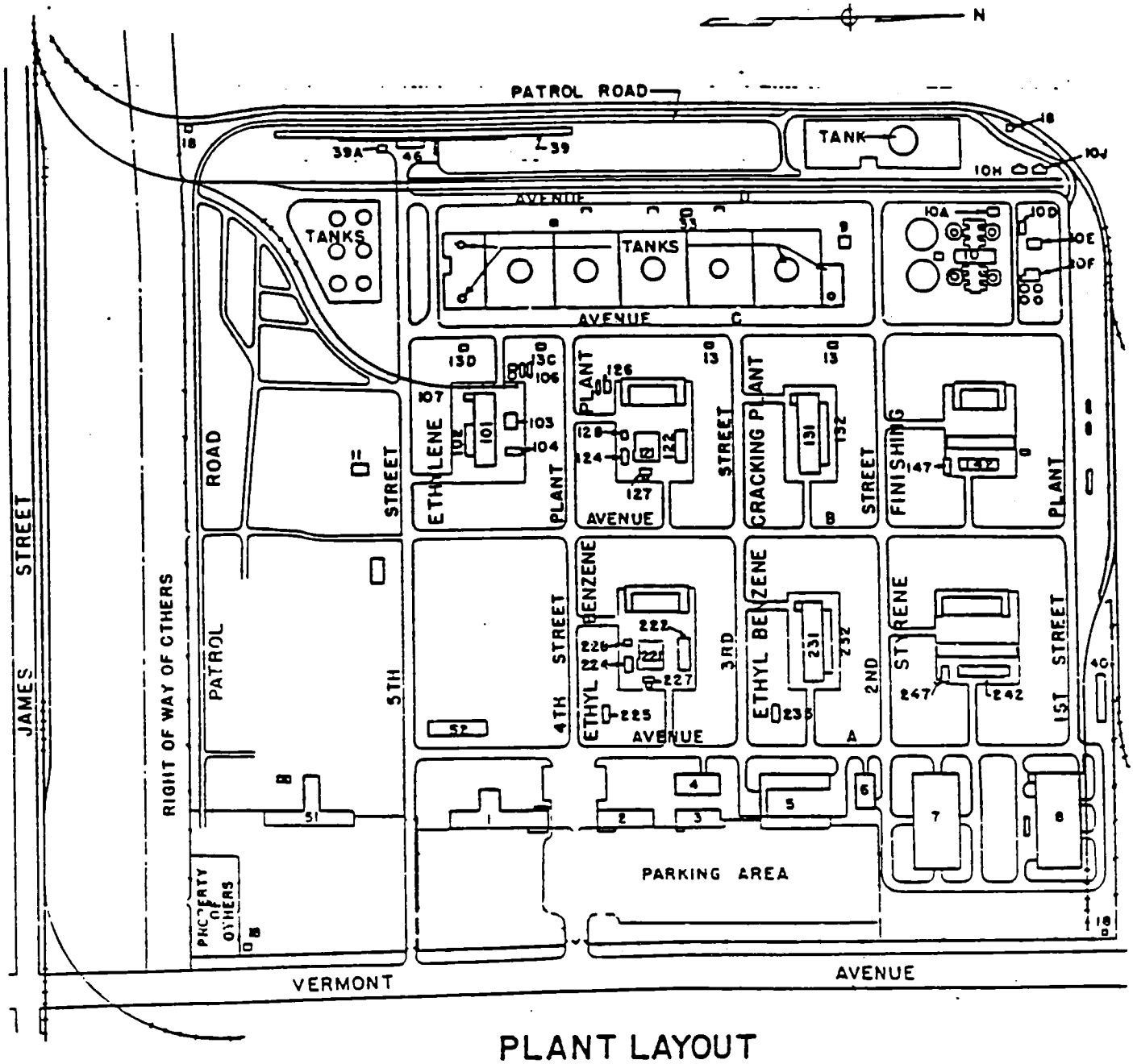
Railroad—Plant is served by Pacific Electric Railway which connects with all railroads at Los Angeles, mainly Southern Pacific Railroad.

Water—None on site—Los Angeles Harbor 9 miles away.

Highways—Plant fronts on arterial highway, namely, Vermont Avenue, connecting Los Angeles proper.

Airport—Plant site is eight miles from Los Angeles Municipal Airport, ten miles from Long Beach Airport, and twenty-three miles from Lockheed Union Air Terminal.

EXHIBIT



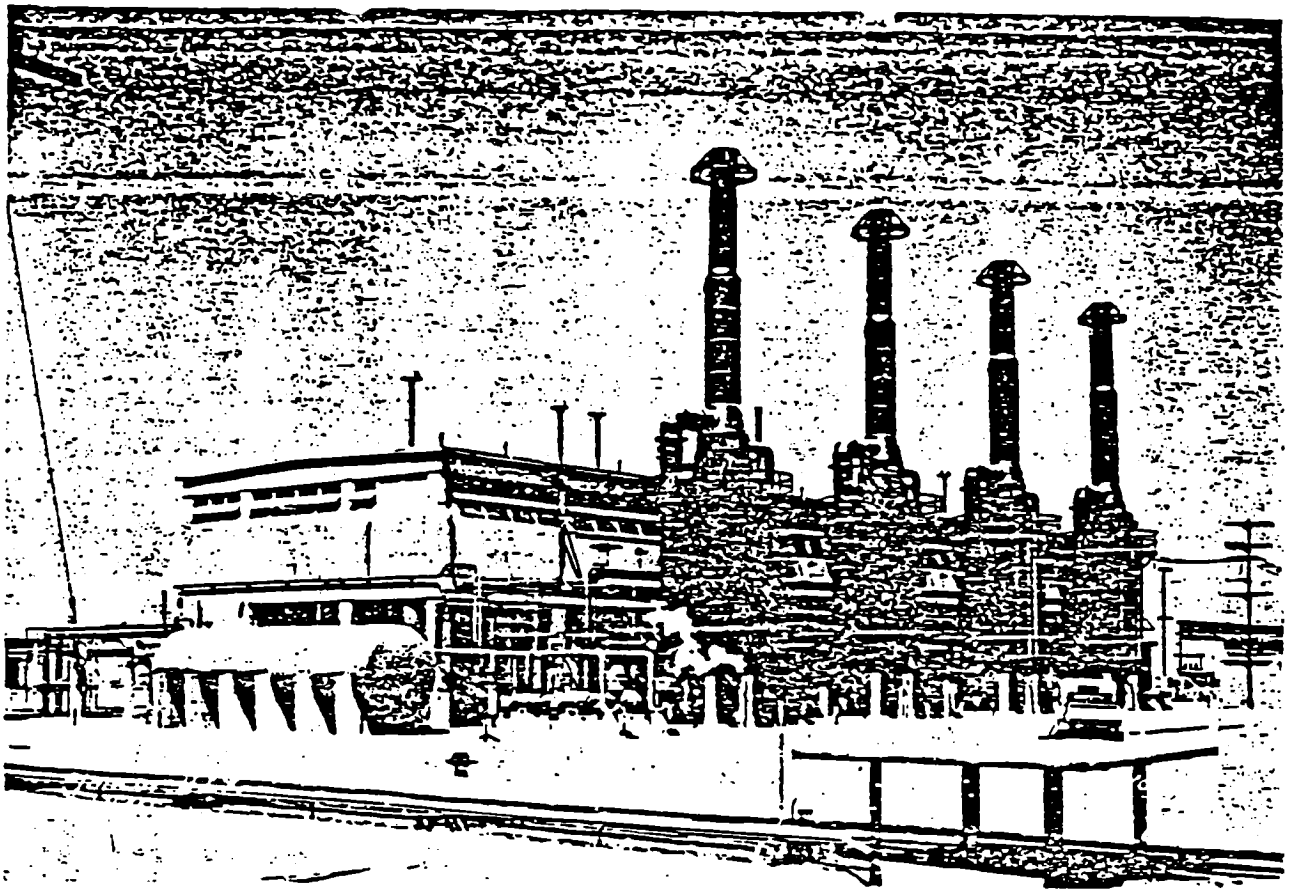
PLANT LAYOUT

SCALE

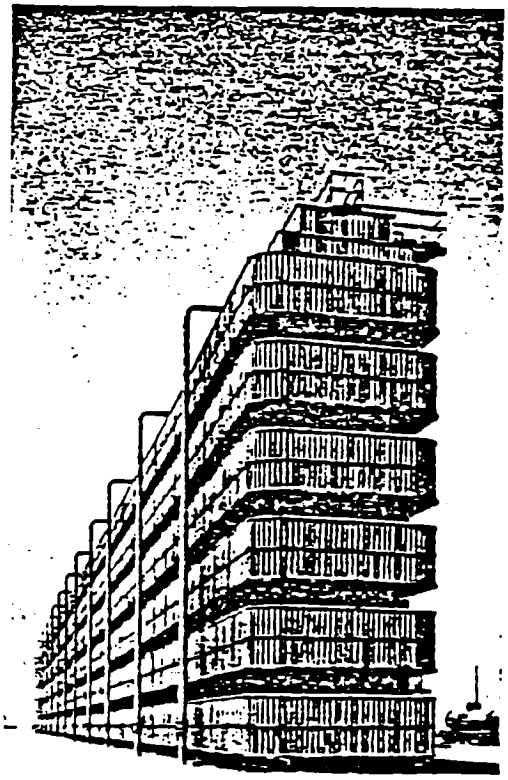
0 100 200 300 400 500

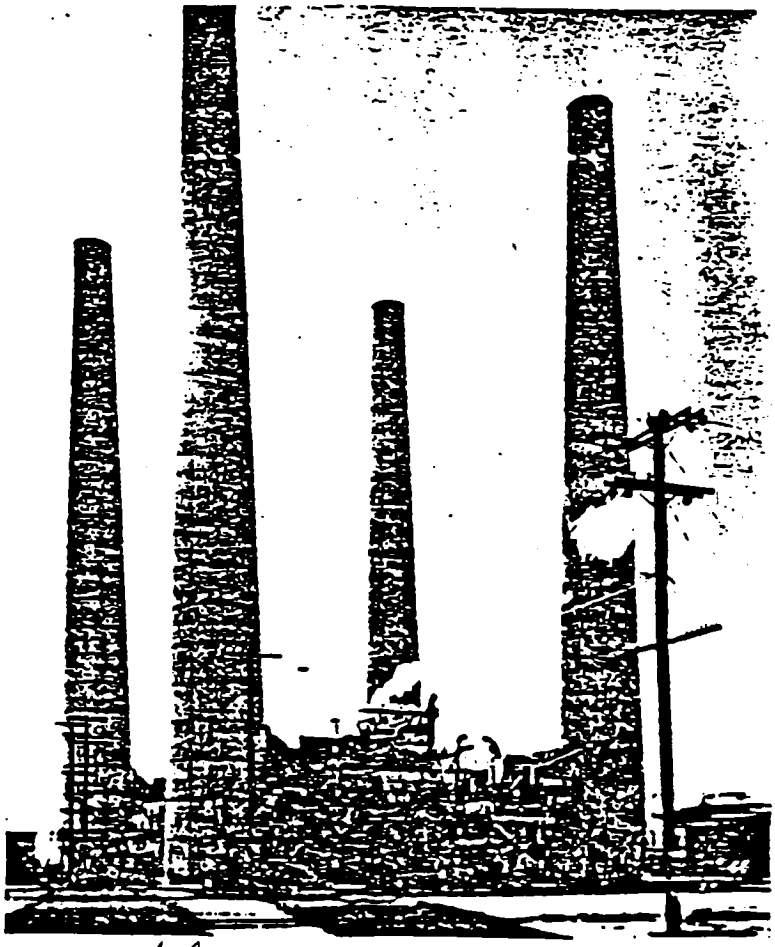
LEGEND

1. Administration Bldg.
2. Personnel Bldg.
3. Cafeteria
4. Laboratory
5. Garage and Fire Station
6. Carpenter and Paint Shop
7. Machine Shop
8. Warehouse
9. Styrene Refrigerator Bldg.
10. Boiler Plant and Water Treating Plant
10A. Boiler Plant Office
10D. Coagulant Feed Pump House and Filtration Plant
10E. Acid House and Water Conditioning System
10F. Pump House and Water Storage Tanks
10H. Brine Storage Tanks and Pump
10I. Caustic and Acid Storage Tank and Pump
11. Substation
13. Foam Generator House
13C. Foam House
13D. Foam House
18. Guard Towers
33. Tank Foam Switch House
39. Cooling Tower
39A. Cooling Tower Switch House
40. Oil Separator Pump Platform
46. Cooling Water and Make-up Water Platform
51. Construction Office
52. Warehouse
101. Main Structure
102. Control House
103. Compressor House
104. Alcohol Recovery Unit
106. Acid Tanks
107. Switch and Transformer House
121. Process Structure
122. Control House
124. Electric Dealkylator
126. Hydrochloric Acid Plant
127. Switch House
128. Catalyst House
131. Process Structure
132. Control House
142. Control House
147. Switch House
221. Process Structure
222. Control House
224. Electric Dealkylator
225. Change House
227. Switch House
228. Catalyst Storage House
231. Process Structure
232. Control House
235. Change House
242. Control House
247. Switch House



ETHYL BENZENE CRACKING UNIT

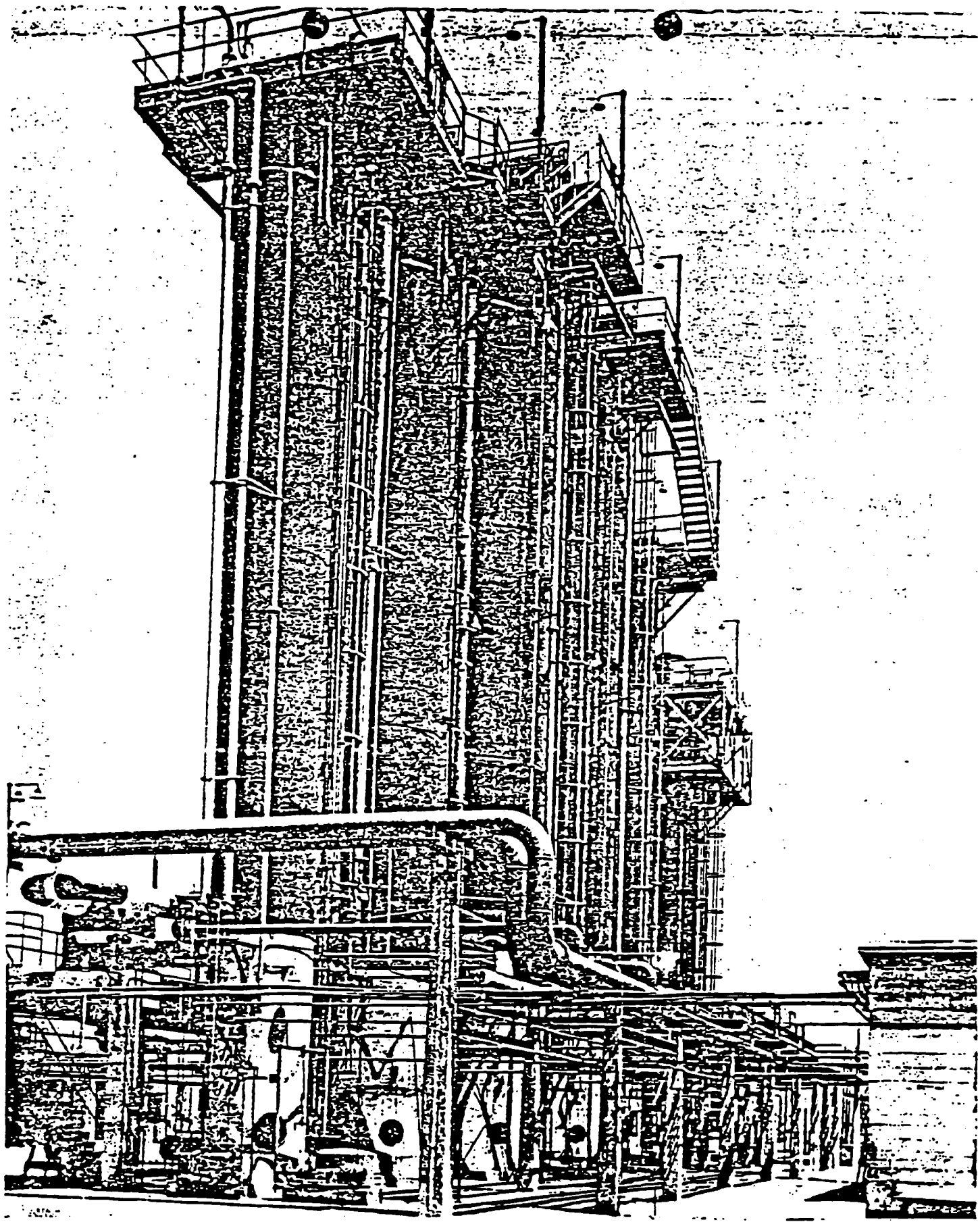




EXHIBIT

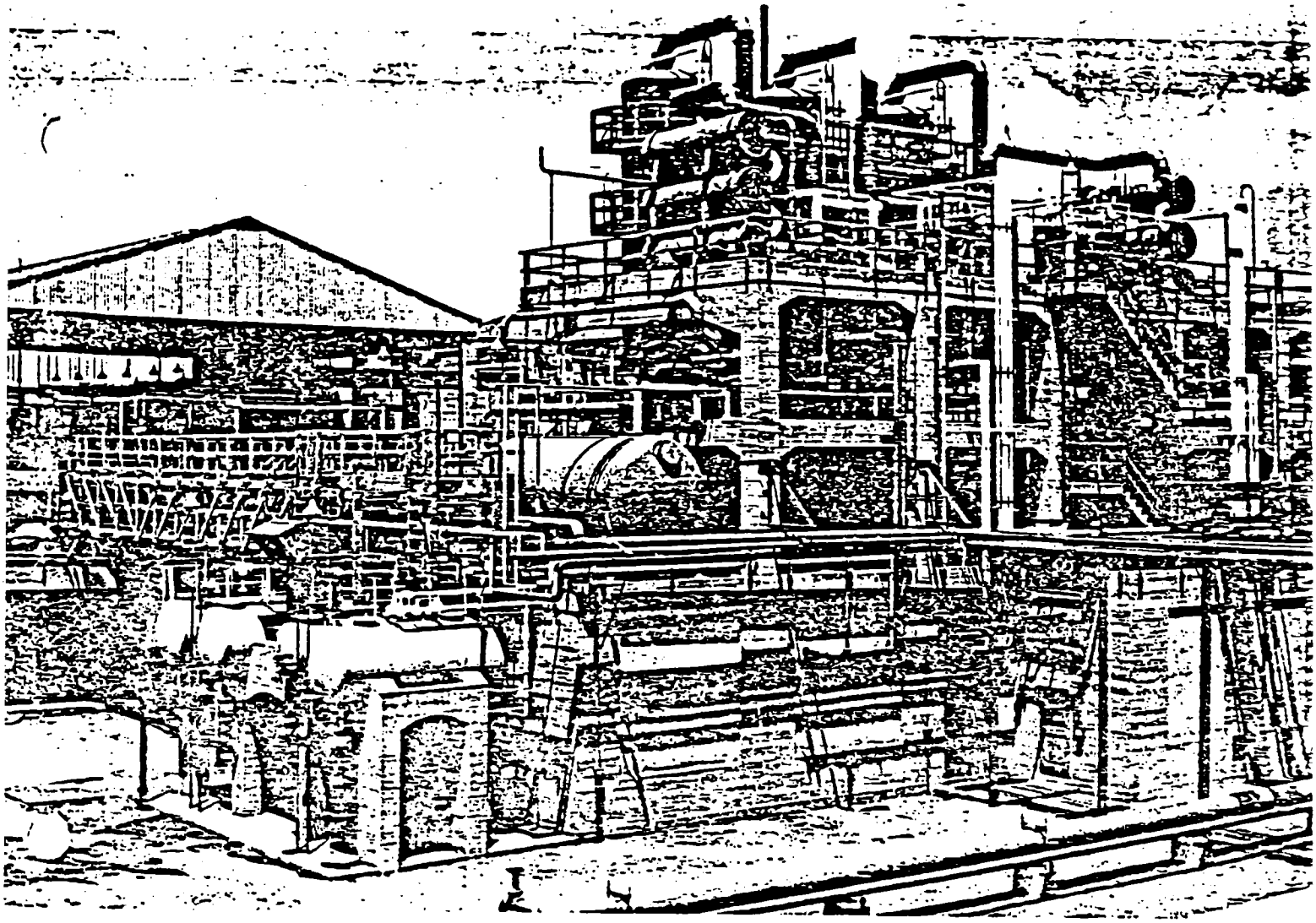
COOLING TOWER

STEAM PLANT



STYRENE FINISHING UNIT

EXHIBIT



INTERRELATING UNITS—BUILDINGS "C" AND "B"

• SYNTHETIC • RUBBER • PLANT •

ADMINISTRATION BUILDING

BUNA-S GRADE

Los Angeles, California

PLANCOR 611

PLANCOR 611

PROPERTY OF DEFENSE
PLANT CORPORATION

A SUBSIDIARY OF
RECONSTRUCTION FINANCE
CORPORATION

EXHIBIT

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DEFENSE PLANT CORPORATION

811 Vermont Avenue, N.W.
Washington 25, D. C.

GENERAL DATA—PLANCOR 611—COPOLYMER PLANT

LOCATION: Los Angeles, California.

LAND: Site consists of approximately 84.0 acres adjacent to Plancors 929 and 963.

PLANT: Consists of land, buildings, machinery, and equipment designed for the manufacture of synthetic rubber from Butadiene and Styrene known as GR-S (Buna-S) by the standardized process developed for the war emergency. Butadiene and Styrene are brought together with other ingredients in reactors and agitated under pressure until polymerization takes place. The resulting latex is then passed through a recovery system where the remaining free Butadiene and Styrene are removed and returned to storage for reuse, while the latex is carried through blending tanks into a coagulation system in which the rubber crumb is formed. The crumb is then washed and passed through a dryer after which it is baled for shipment.
The plant has three parallel units each with a rated capacity of 30,000 long tons of rubber per annum. Two of these units are operated by one company, the remainder by another. Utilities are common to both.

Production Area consists of approximately 60.0 acres. The two units operated by one company cover approximately 35.0 acres. The remaining one unit operated by the other company covers approximately 25.0 acres. Each 30,000 ton unit comprises a pigment, storage and preparation building, a reactor structure, a pump house, a recovery building, a process and finished storage building, a machine shop building, together with other smaller service buildings, totaling approximately 367,000 sq. ft. floor area for all units in both sections.
A laboratory building with essential equipment is also a part of each process section. Production equipment consists of reactors and other pressure vessels, pumps, compressors, cooling towers, condensers, heat exchangers, wood tanks, steel tanks, vacuum filter, steam dryers, balers, and other small equipment including instruments.
Adequate storage for raw materials such as Butadiene and Styrene is provided in steel tankage, on separate tank farms, for each company operated section. Butadiene is piped from adjacent Plancor 963 and also by tank car and Styrene is supplied by direct pipe line from adjacent Plancor 929.

Administrative Area covers approximately 7.0 acres. Each operated section is served by an administrative area, one comprising approximately 4.0 acres, the others approximately 3.0 acres. Each area contains an administration building, a guard house and hospital, and a garage totalling approximately 25,000 sq. ft. of floor area for both sections. Office furniture and fixtures included.

UTILITIES: *Water* for processing and domestic use is supplied by the Department of Water and Power of the City of Los Angeles.
Sewers: All sanitary and storm sewers connect with City of Los Angeles' main sewer system.
Electricity: Power and light current is provided by Department of Water and Power of City of Los Angeles, at 13,800 volts to Plancor sub-stations where it is further distributed to 480/208-120 volt Deta Star connected transformers which furnish lighting service and single phase 120-volt power. All motors rated over ½ H.P. are fed by secondary lines at 480 volts—3 phase.
Steam: For heating and processing is furnished from Steam Plant of adjacent Plancor 929 through 16" pipe line.
Natural Gas is supplied by Southern California Gas Company.

TRANSPORTATION: *Railroad:* Plant is served by Pacific Electric Railway which connects with the Southern Pacific Railroad.
Water: None on site—Los Angeles Harbor 9 miles away.
Highways: Plant fronts on arterial highway, namely, Vermont Avenue which connects with Los Angeles proper.
Airport: Plant site is approximately eight miles from Los Angeles Municipal Airport and ten miles from Long Beach Airport.

The information contained herein is believed to be correct, but no guarantee is made.

EXHIBIT

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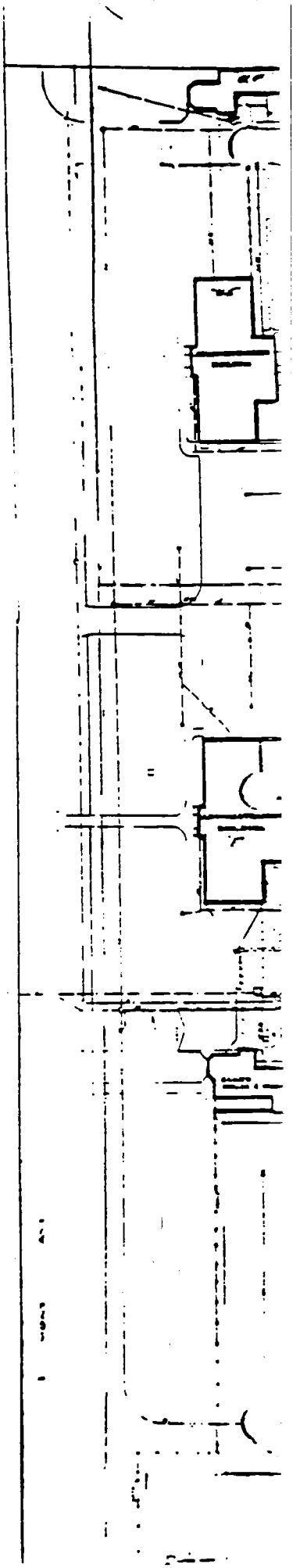
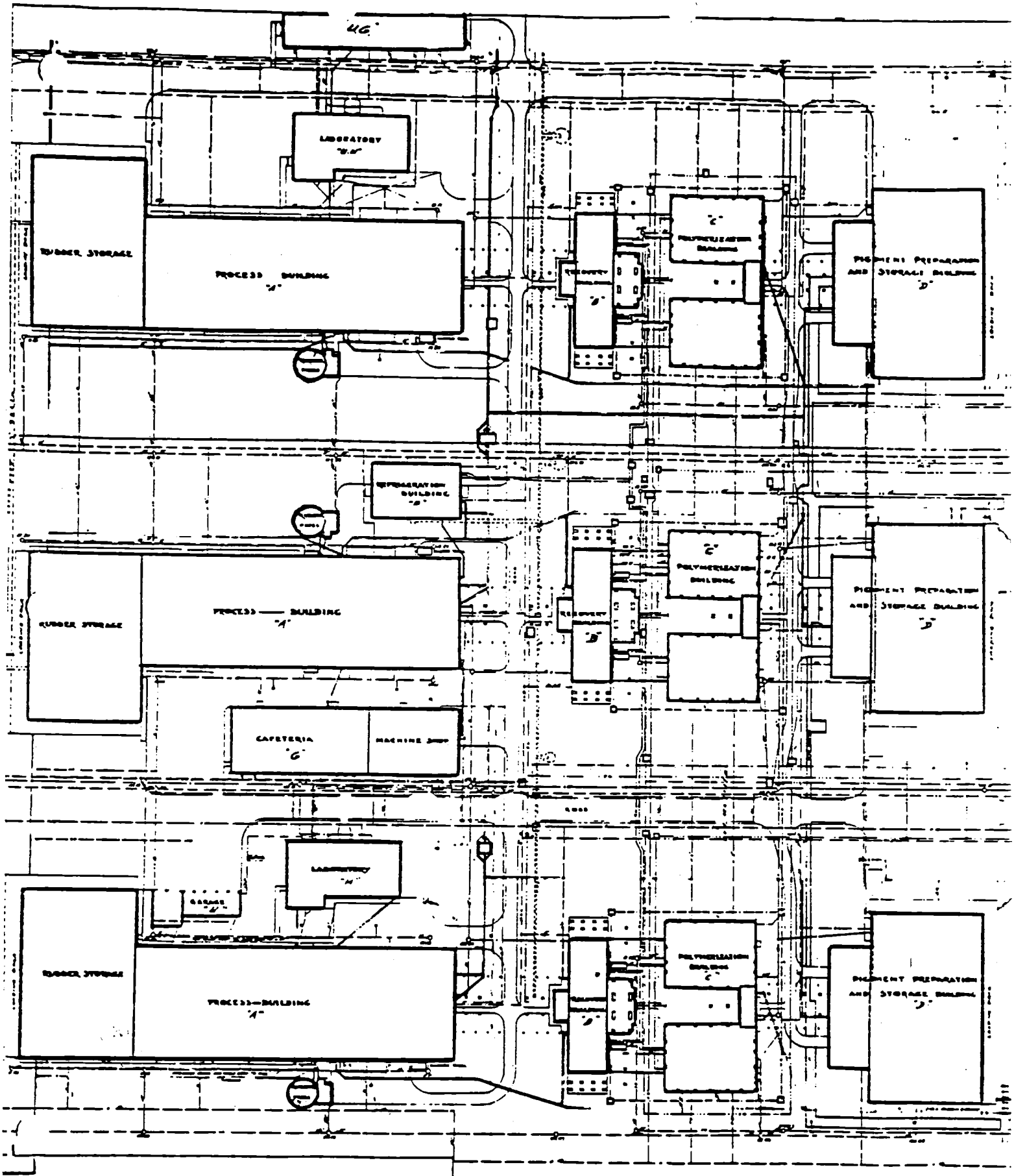
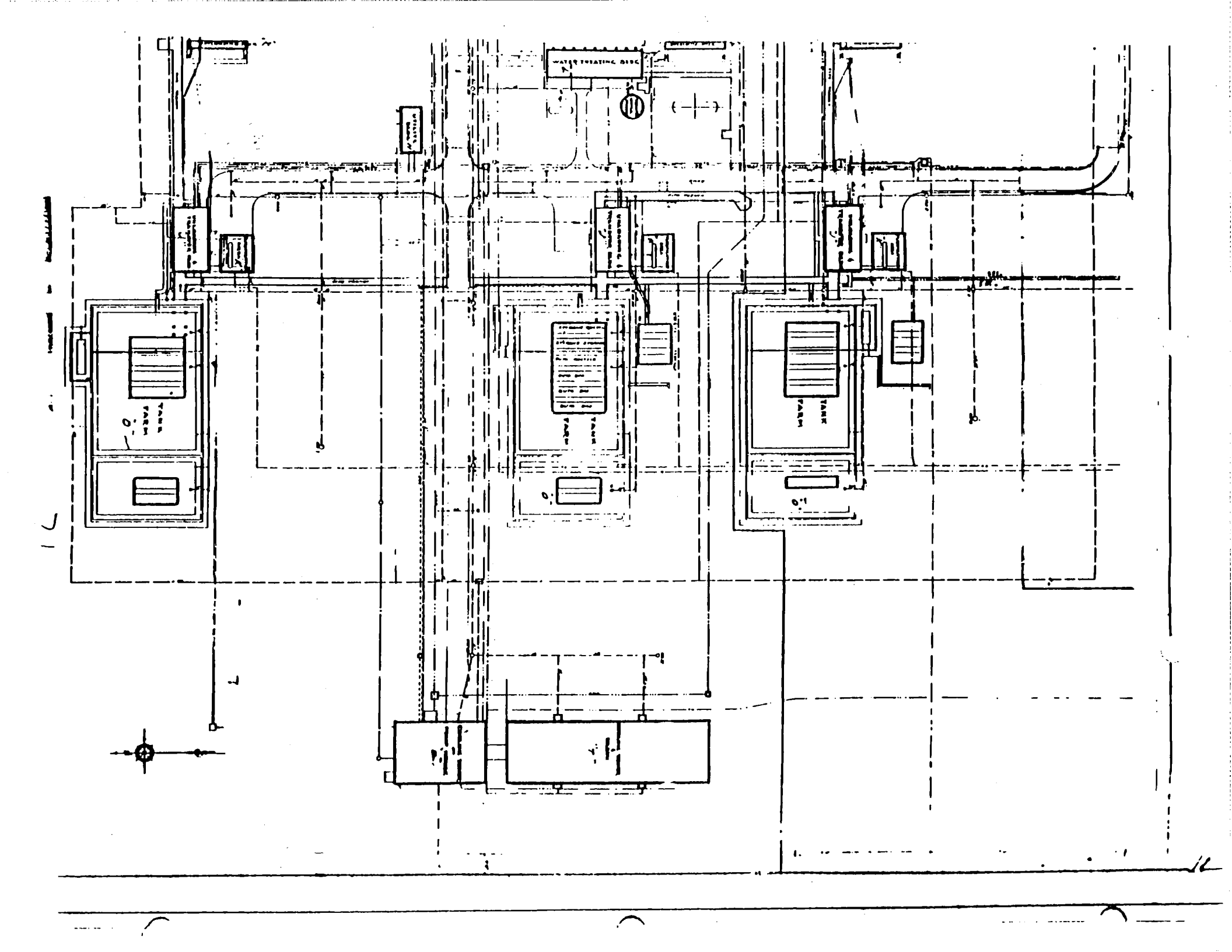
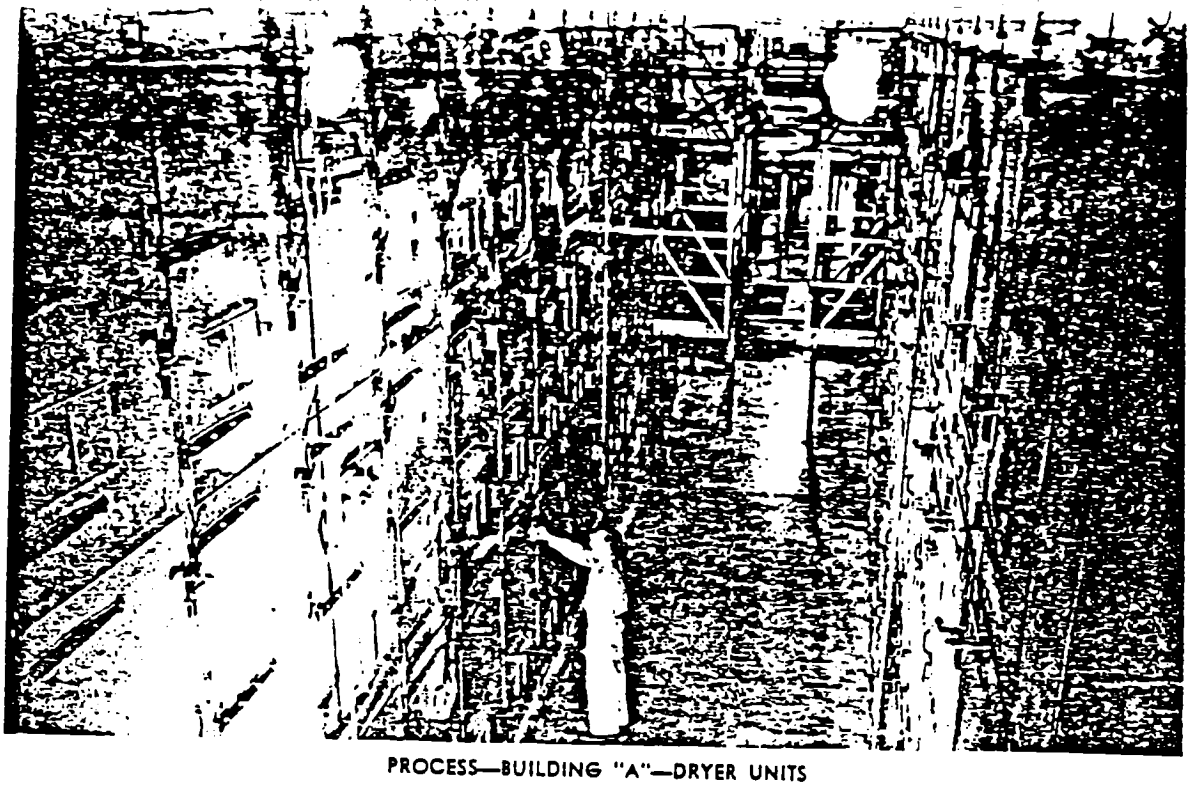


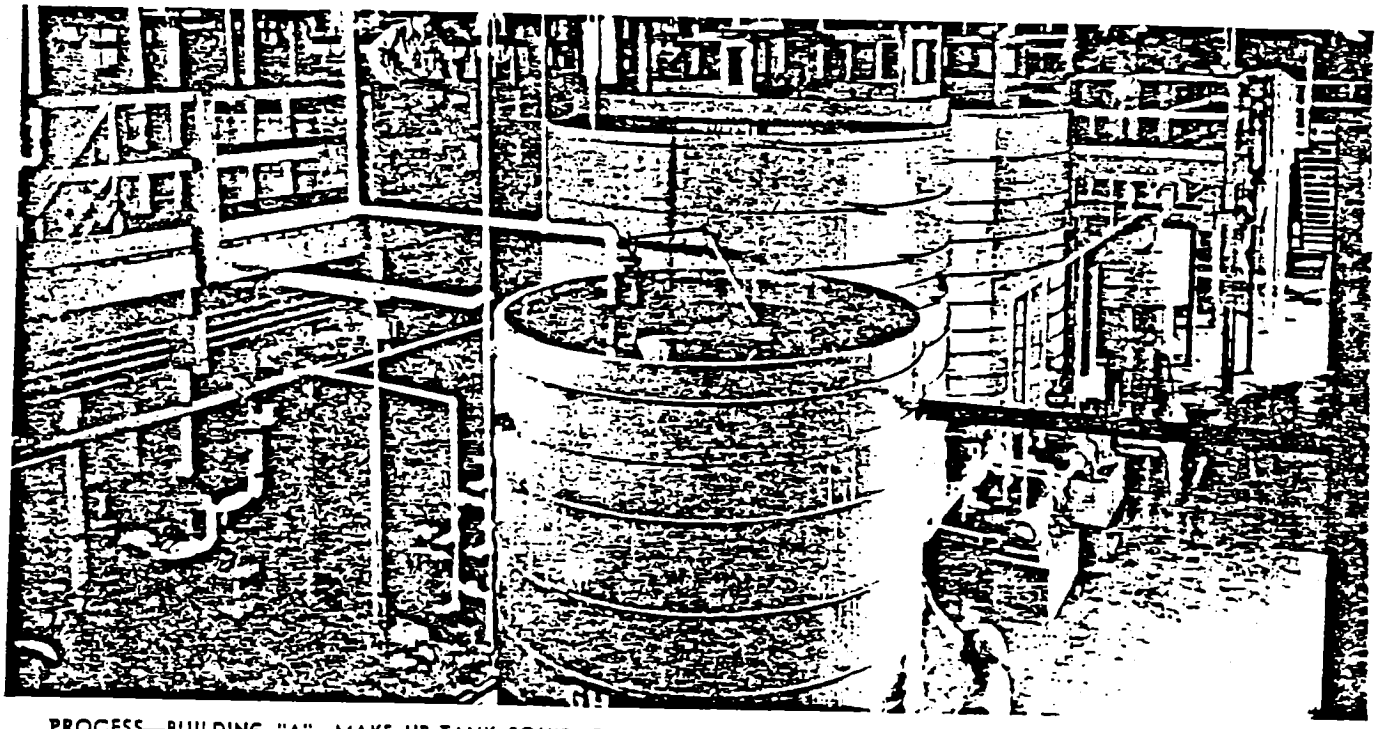


~ LAYOUT OF PLANT ~



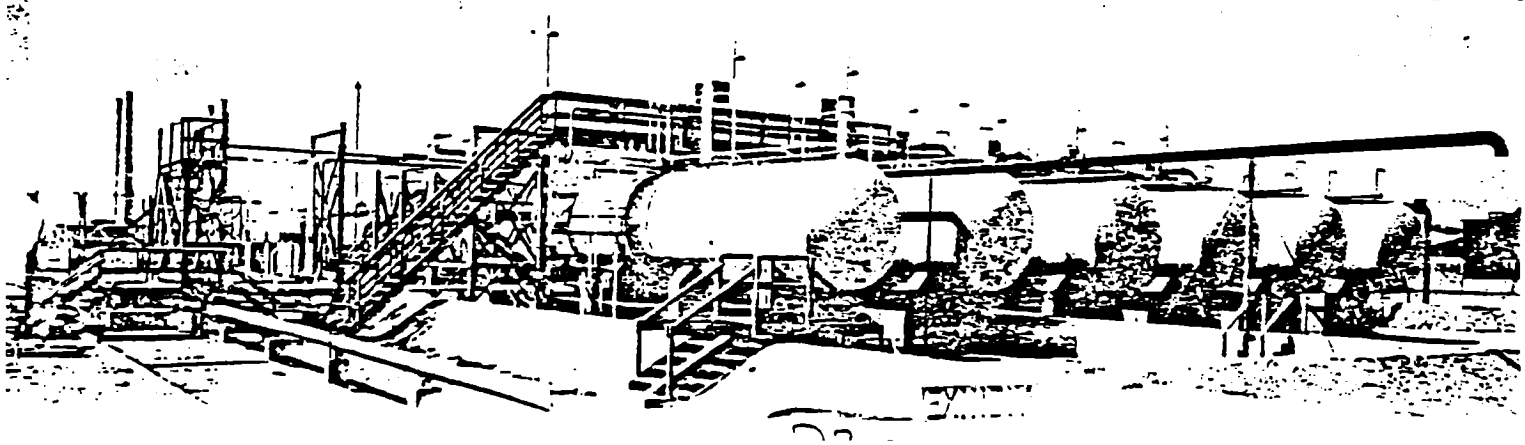


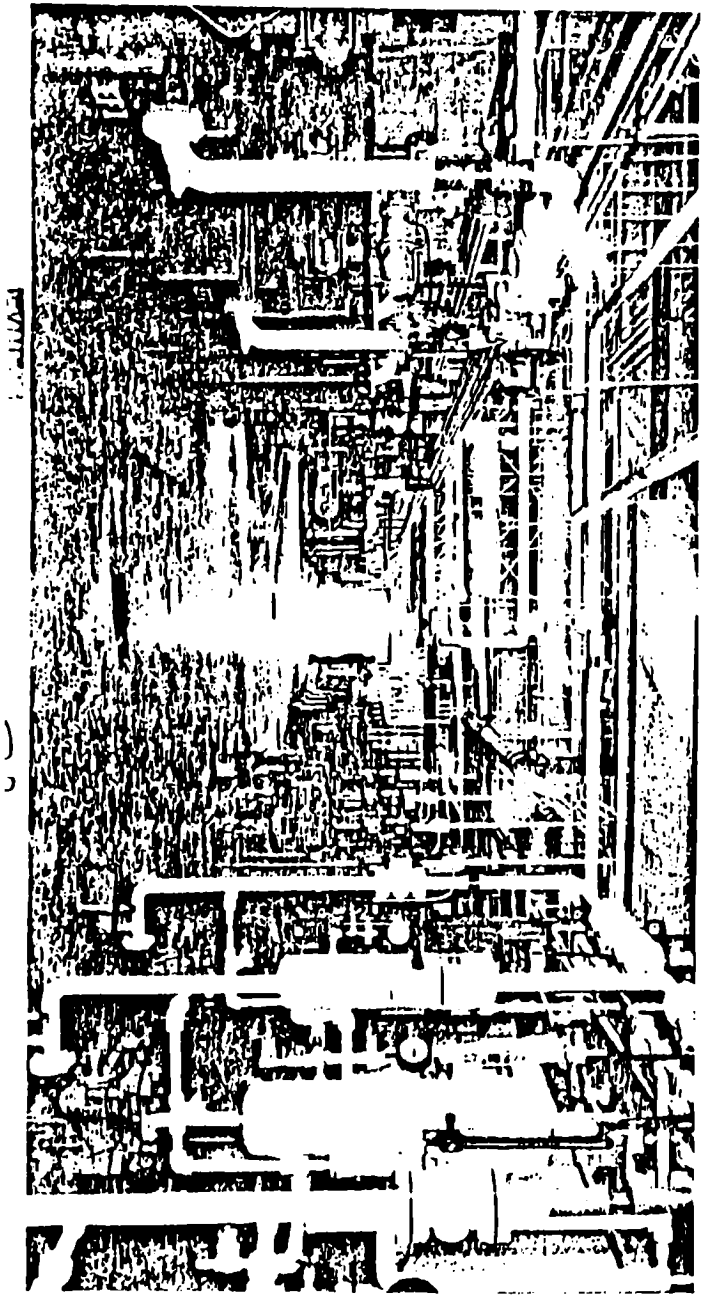
PROCESS—BUILDING "A"—DRYER UNITS



PROCESS—BUILDING "A"—MAKE UP TANK EQUIPMENT

TANK FARM AREA—AREA "O"





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RECOVERY BUILDING "B"—PUMP HOUSE

POLYMERIZATION OR REACTOR CONTROL ROOM

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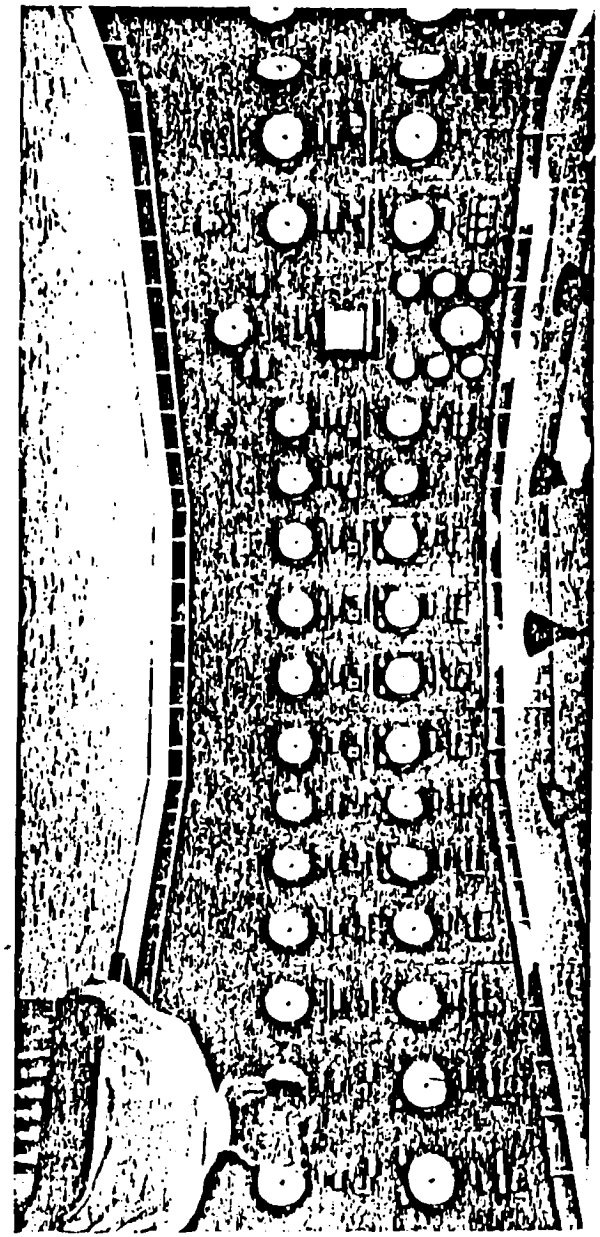

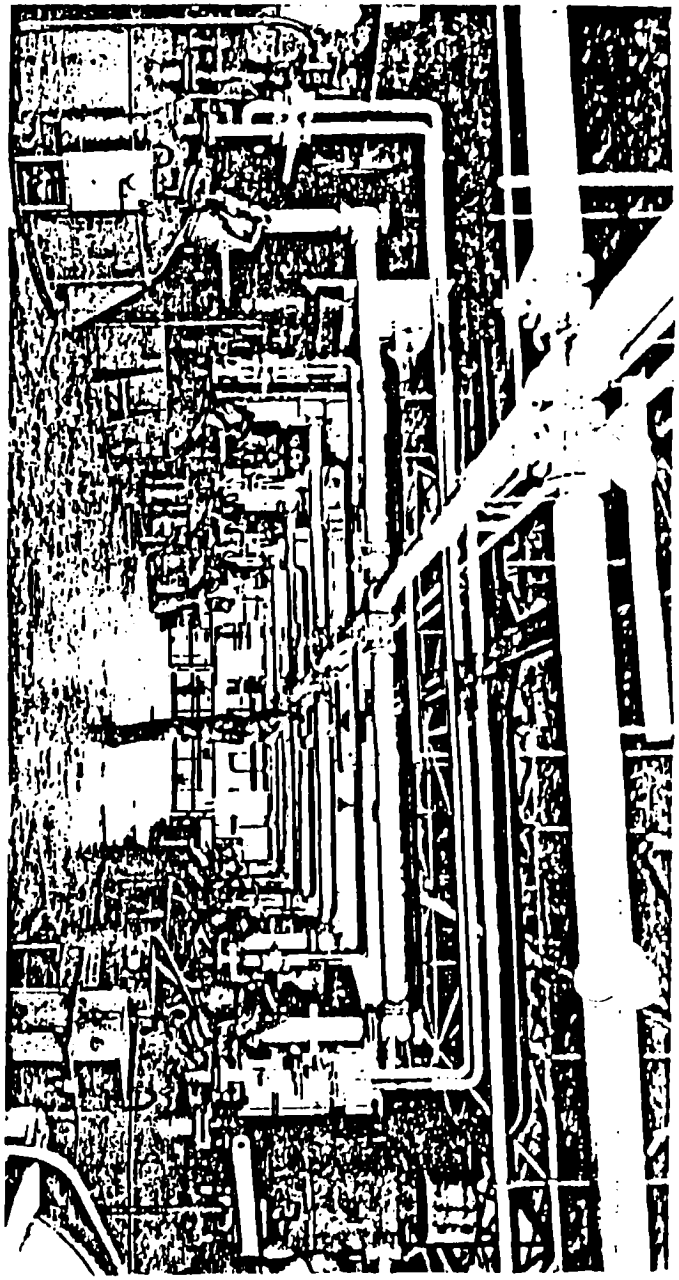

↑

REACTOR EQUIPMENT ACCESSORIES, BUILDING "C"

Ex 3 EXHIBIT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, A CALIFORNIA GENERAL PARTNERSHIP, Plaintiff, vs. SHELL OIL COMPANY, A CORPORATION, AND SHELL PIPE LINE CORPORATION, et al., Defendants.	Case No.89-3738 WMB

Deposition of THOMAS R. WILLIAMS, taken on November 15, 1990, beginning at 10:05 a.m., in the offices of United Reporting, Inc., 7407 Old Katy Road, Houston, Texas 77024, before DAVID R. MINEHART, Certified Shorthand Reporter and Notary Public in and for the State of Texas, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S:

MR. MARK SCHAFFER
AUGUSTINI, WHEELER & DORMAN
523 West Sixth Street, Suite 330
Los Angeles, California 90014
Counsel for Plaintiff

MR. GREGORY C. HORN
KELTNER & SCHREIBER
12100 Wilshire Boulevard, Suite 700
Los Angeles, California 90025-7199
Counsel for Defendants

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I N D E X

EXHIBITS FOR IDENTIFICATION

(None)

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A. No.
Q. Do you know who demolished those facilities?
A. I don't remember the exact name of the company that did it.
Q. Did the James Montgomery analysis ever test for chemicals in ground water at the waste pit area?
A. I really don't remember the details of what's in that report. I don't remember whether there were ground water analyses or simply soil analyses.
Q. Have you ever seen the agreement to sell the property to CC&F?
A. No.
Q. Do you know if Shell has a copy of that agreement?
A. No, I don't.
Q. Do you know who would know if Shell has a copy of that agreement?
A. I think the real estate department would be the only people who would know.
Q. They're located in one of the Shell buildings downtown of Houston?
A. Yes, uh-huh.
Q. Are you familiar with any of the terms of the sale to CC&F?
A. My understanding is that it was sold as is; that

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is to say, the property was turned over to Cabot, Cabot & Forbes and that they were responsible for the demolition of the facilities and so forth. Beyond that, I'm not aware of what the terms of the sale were.

Q. When you were actually working at the chemical plant between 1956 and 1966, were any of the three plants ever shut down?

A. Well, what do you mean by "shut down"?

Q. In which the facilities were closed for the day.

A. For the day?

Q. For the day.

A. Of course.

Q. Okay. On what occasions?

A. Oh, I don't remember. That's a very common occurrence in a chemical plant, that some part of the facility is shut down.

Q. Why is it a common occurrence?

A. Because things break.

Q. Okay. What sort of things broke that required shutdown, that you remember?

A. Well, I don't remember any specific details. There are pumps that fail, compressors that fail. Equipment failures of all sorts would require shutdowns. There's equipment clean-out required,

I, DAVID R. MINEHART, Certified Shorthand Reporter in and for the State of Texas, being neither attorney for, related to nor employed by any of the parties or any attorneys of record in this cause, and having no financial interest in the matter, hereby certify pursuant to the Federal Rules of Civil Procedure and/or agreement of the parties present, to the following:

That this deposition transcript of THOMAS R. WILLIAMS, deposed on November 15, 1990, is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me.

Given under my hand and seal of office on this the 21st day of November, 1990.

David R. Minehart

DAVID R. MINEHART, CSR
Certificate No. 2375
Date of Expiration: 12-31-91
United Reporting, Inc.
7407 Old Katy Road
Houston, Texas 77024
(713) 681-9800

Job No. 15754

7C EXHIBIT

Ex 4

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California general partnership, Plaintiff, vs. SHELL OIL COMPANY, a corporation, and DOES 1 through 30, inclusive, Defendants.	No. CV 89 3738 WMB (Kx)

Deposition of LLOYD ROYCE DONKLE, VOLUME I, taken on behalf of the Plaintiff, at 310 Golden Shore, Third Floor, Long Beach, California, commencing at 9:00 a.m., on Monday, April 2, 1990, before DEBBY STEINMAN, Certified Shorthand Reporter No. 2907, pursuant to Notice.

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APPEARANCES:

For Plaintiff:

AUGUSTINI, WHEELER & DORMAN
Attorneys at Law
BY: ALFRED E. AUGUSTINI
523 West Sixth Street
Suite 330
Los Angeles, California 90014

For Defendants:

KELTNER & SCHREIBER
Attorneys at Law
BY: MARK SCHREIBER
12100 Wilshire Boulevard
Suite 700
Los Angeles, California 90025

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Long Beach, California, Monday, April 2, 1990

9:00 a.m.

LLOYD ROYCE DONKLE, VOLUME I,

produced as a witness by and on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. AUGUSTINI:

Q I know you've already given your full name to the reporter but, for the record, would you state it for us, please.

A Lloyd Royce, R-o-y-c-e, Donkle, D-o-n-k-l-e.

Q I've seen several spellings for your name so it's D-o-n-k-l-e?

A Right.

Q Okay. What's your present address, Mr. Donkle?

A 3809 Walnut Avenue, Long Beach, 90807.

Q And your phone number?

A (213) 427-6735.

Q Now, I think you know from telephone communications with our office, but in case you don't, my name is Al Augustini and I'm an attorney representing

they discussed what they planned to do.

Q Well, at some time did you ever discuss being an advisor to Cabot prior to the time the transaction closed in December of 1972?

A They asked me if I wanted to go with them. And I said, well, I thought that would be a good idea.

Q And in that discussion, was there any explanation as to what their plans were and why they would want you to join them, how you could help them?

A I think their interest at that time was for me to work for two years. And at that time we expected to have the demolition complete and the property -- some portion of the property ready to do something with.

Q And did you have any idea what that was? It certainly wasn't going to be --

A I think at some point, probably in early 1973 -- I mean, I knew -- I had been told by them that they intended to build an industrial park.

Q Okay. Did they ever inquire of you as to whether there was any portion of the property that would not be suitable for some use other than a chemical plant? I mean, did they ever say, "Hey, look, we want to know if we want to use this for some purpose other than a chemical plant, are we going to have any problems?" Did they ask you anything like that?

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A They knew. They had done all the soils work.

Q They, Cabot, Cabot & Forbes?

A Sure.

Q And who did the soils work?

A Ken O'Brien & Associates.

Q Did anyone else -- and this was before the deal closed?

A Yes.

Q And to the extent that that work was done, how did Ken O'Brien get permission to come on the property to do whatever it was that he did?

A I presume he contacted the acting plant manager.

Q Which would have been Pinky?

A No, that would be Pres Ruby.

Q Oh, I thought -- we missed him somewhere along the line. I thought the last guy was Pinky?

A Well, he was plant manager but Pres Ruby was manager of industrial relations personnel, and Pinky left and Pres was there until the bitter end.

Q What's his full name?

A J.P.-- I don't know what the initials stand for. J. Preston Ruby, I suppose.

Q R-u-b-y?

A Yep.

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Q Is he still around?

A Yes.

Q Where is he?

A Corona del Mar. Now, it's possible Pinky was still here at the time, possible Pres hadn't taken over. I don't know. But in any event, Ken O'Brien came on the site to do evaluation work, get the soils conditions for the grading.

Q Okay. And you understood that at that point at least that they were considering removal of all the structures and recreating the entire site?

A Yes.

Q And did you ever see the Ken O'Brien reports?

A Yes.

Q How did you get them?

A Ed Secord gave me one.

Q And when was that?

A Probably 1973.

Q Sometime after you became an advisor?

A Yes.

Q And did you study that report?

A Yes.

Q And is it your understanding that those reports provided information concerning the chemical contamination of the property or lack thereof?

A Yes.

Q I've got them here. I'll show you a stack. We've got them in two piles. One stack, it says, "Log of Boring 1-A," the other one says "Volume II of III, Log of Boring 15." And there's a bunch of stacks with it.

Are those the Ken O'Brien reports that you identified?

A Yes, uh-huh. Yes.

Q Can you show me where -- and let's take this first one, the one that the first page is Log of Boring 1-A, and B10243 is the Bates stamp page number. It goes up to B10265.

Show me where in that stack it tells you what areas there are that are contaminated. Flip through that.

A Will you repeat your question, please.

Q Yes. Where in that package that I have just handed you is there some reference to the presence or absence of contamination?

A Can we turn the record off?

Q Sure.

(Discussion off the record.)

BY MR. AUGUSTINI:

Q Where was Boring 1-A, do you know?

A No.

Q Do you know where there's a reference to any

of these, where I can find a reference to where any of these borings were?

A The original report.

Q And who did an original report, Ken O'Brien & Associates?

A Ken O'Brien & Associates, right.

Q So are you saying there's a report that goes with these borings that I haven't gotten?

A Yes.

Q And if I had that report, it would tell me where these borings were made?

A Yes.

Q Then by comparing the location of the borings to their description of the contents of the borings, we'll know where these things were found?

A Yes.

Q Do you recall in what areas Ken O'Brien found oil or tar or other hydrocarbons on the property? I don't have it. It was never given to me, so I don't know where these borings were. Maybe you can remember.

A I'm not certain that there was a report of the entire plant site.

Q By Ken O'Brien?

A Right.

Q Which --

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A And I'm sure that the only place that oil was discovered was in the south end of the styrene plant between the Department of Water and Power right-of-way and Del Amo Boulevard, which area has been completely defined in other studies.

Q And that's the Del Amo or Cadillac Fairview waste site?

A Right.

Q Perfect. That was the subject of the Dames & Moore interim report sometime in 19 -- in the '80s?

A As far as I know, yes. I have never seen that report. It's hearsay to me.

Q In the Dames & Moore report, they have a summary of sampling activities. It's Table 3.2-1. And it says that there was a sampling taken by the Department of Health Services in February 1981. Do you know anything about that?

A I suspect that there was. There had been some communication from the Department of Health Services as you noted from the communication from Shell Oil.

Q That was later though.

A Well, in any event, there were contacts by Department of Health Services and they wanted to come down and take a sample and I suspect we let them in.

Q I take that back. There was a letter dated

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STATE OF CALIFORNIA)
) ss.
COUNTY OF)

The undersigned Certified Shorthand Reporter of the State of California does hereby certify:

That prior to being examined, the witness in the foregoing proceedings was duly sworn to testify the truth, the whole truth and nothing but the truth.

That said proceedings were taken before me at the time and place therein set forth, and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; and I hereby certify that the foregoing transcript of proceedings is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name this 12th day of April, 1990.

Debby Steinman

DEBBY STEINMAN
CSR NO. 2907

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O'Brien Study

PRELIMINARY SITE INVESTIGATION
PROPOSED INDUSTRIAL PARK DEVELOPMENT
SHELL CHEMICAL PLANT PROPERTY
LOS ANGELES, CALIFORNIA

for

CABOT, CABOT & FORBES
C.C.&F. WESTERN DEVELOPMENT CO., INC.
September 22, 1972

Vol. I of III

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PRELIMINARY SITE INVESTIGATION
PROPOSED INDUSTRIAL PARK DEVELOPMENT
SHELL CHEMICAL PLANT PROPERTY
LOS ANGELES, CALIFORNIA
for
CABOT, CABOT & FORBES
C.C.&F. WESTERN DEVELOPMENT CO.,INC.
September 22, 1972

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PRELIMINARY SITE INVESTIGATION
PROPOSED INDUSTRIAL PARK DEVELOPMENT
SHELL CHEMICAL PLANT PROPERTY
LOS ANGELES, CALIFORNIA
for
CABOT, CABOT & FORBES
C.C.&F. WESTERN DEVELOPMENT CO.,INC.
September 22, 1972

I INTRODUCTION

A. Purpose

The purpose of this report is to present the findings of a preliminary study of the surface and subsurface conditions of the Shell Chemical Plant property located in the southern part of Los Angeles, California.

B. Location

The Shell Chemical Plant property (approximately 277 acres) is located a short distance to the southwest of the intersection of the San Diego and Harbor Freeways. Refer to Plate No's. 1 and 2. The property is separated into two parts. One portion (approximately 195 acres) is bordered on the north by 190th Street, on the east by Vermont Avenue, on the south by the extension of Del Amo Boulevard, and on the west by an industrial area whose frontage is on Normandie Avenue. The second portion (approximately 82 acres) is bordered on the north by Knox Street, on the east by Hamilton Street, on the south by Del Amo Boulevard, and on the west by Vermont Avenue.

EXHIBIT

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C. Authorization

This preliminary site investigation was authorized by Cabot, Cabot & Forbes, C.C.&F. Western Development Co.,Inc., Los Angeles, California. The objective of this investigation is to determine the suitability of the Shell Chemical Plant property for development into an industrial park.

D. Scope

This report presents subsurface information including geology, seismology, soils, results of laboratory tests on typical subsurface materials, location of sumps and contaminated areas, description of existing structure foundations, and description of existing utilities (sewers, storm drains, water mains, gas mains, etc.). This report also presents information on surface conditions such as existing streets, railroads, buildings, drainage, utilities, etc.

The findings of the preliminary site investigation are presented to indicate the nature of the problems that will be encountered in developing the Shell Chemical Plant property into an industrial park. The report recommends which existing facilities and utilities should be retained. A series of industrial park layouts were developed and the most promising preliminary plan at this time is included. Refer to Plate No. 3.*

*In Folio

EXHIBIT

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II ENGINEERING GEOLOGY

A. Geology and Physiography

The Shell Chemical Plant site is located physiographically in the Angeles Section of the Pacific Border Province. This particular area is known as the Torrance Plain and is of marine origin.

It is understood that the site prior to construction of the Chemical Plant in 1941 was used for agricultural purposes.

Geologically, the site is underlain by Pliocene and older rocks. Refer to Plate No. 4. These are overlain by the San Pedro formation and unnamed Upper Pleistocene deposits. Above these, occur the Palos Verdes Sand or equivalent of Upper Pleistocene age. The highly fossiliferous sand encountered in Auger Boring No's. 5, 8 and 15 drilled during the subsurface investigation, and the thin coquina beds encountered in Boring No's. 5 and 15 probably represent the basal portion of the Palos Verdes sand zone. The reddish brown deposits encountered in Auger Boring No's. 8, 12, 15, 17, 19, 21 and 22 represent terrace cover of probable flood plain origin or may be the upper few feet of the Palos Verdes sand modified by weathering. The dark brown to black organic near surface material probably represents remains from the original agricultural usage.

EXHIBIT

Soil samples were recovered from the auger borings utilizing a 2.43-inch I.D. split spoon sampler that contained either 1-inch rings and/or 5- or 6-inch sleeves. Standard penetration tests were made with a 1-1/2-inch I.D. split spoon sampler driven by a 140-pound hammer falling 30 inches. Disturbed samples were also recovered at various intervals for moisture content determination and grading analysis.

B. Laboratory Testing

Representative samples of subsurface materials recovered from the soil borings were subjected to the following laboratory tests that were performed by Western Laboratories.

In situ Moisture Content
In situ Density
Gradation/Hydrometer
Atterberg Limits
Unconfined Compression
Consolidation and Swell
Swell Tests
Direct Shear

The in situ moisture content and density determinations are recorded on the boring logs. The results of the remainder of the tests are presented on Plate No's. 9 through 30.

C. Subsurface Conditions

The materials encountered in the soil borings consisted of a heterogeneous mixture of sandy clay, clayey sand, silty sand, sand, sandy silt and silty clay. This heterogeneous mixture extends to approximately ±40 feet in depth. In Boring No's. 5, 8 and 15, a thin sand section containing numerous shell fragments

was encountered at 42, 39 and 44 feet, respectively. A well cemented shell bed 'Coquina) was encountered at 45 and 49 feet in Boring No's. 5 and 15, respectively. The typical subsurface soil conditions for the Shell Chemical Plant property, except for the contaminated areas, are presented on Plate No. 6.

As previously mentioned, three contaminated areas were found during the subsurface investigation. The areal extent of the contaminated areas is shown on Plate No. 7. A profile of the vertical extent of contamination in Area No's. 1 and 2 are shown on Plate No. 8. The contamination consists of oil-saturated native materials in Area No's. 1 and 2. In Area No. 3, the oil saturation extends to 5-foot depth and below this depth the native materials have been chemically contaminated to approximately 10 feet. The contamination in Area No. 2 also includes debris (broken concrete, wood, old tires, etc.) that was dumped into the sumps.

D. Properties of the Subsurface Materials

The properties of the subsurface materials encountered at the Shell Chemical Plant property based on laboratory tests are summarized in the following tabulation:

EXHIBIT 4

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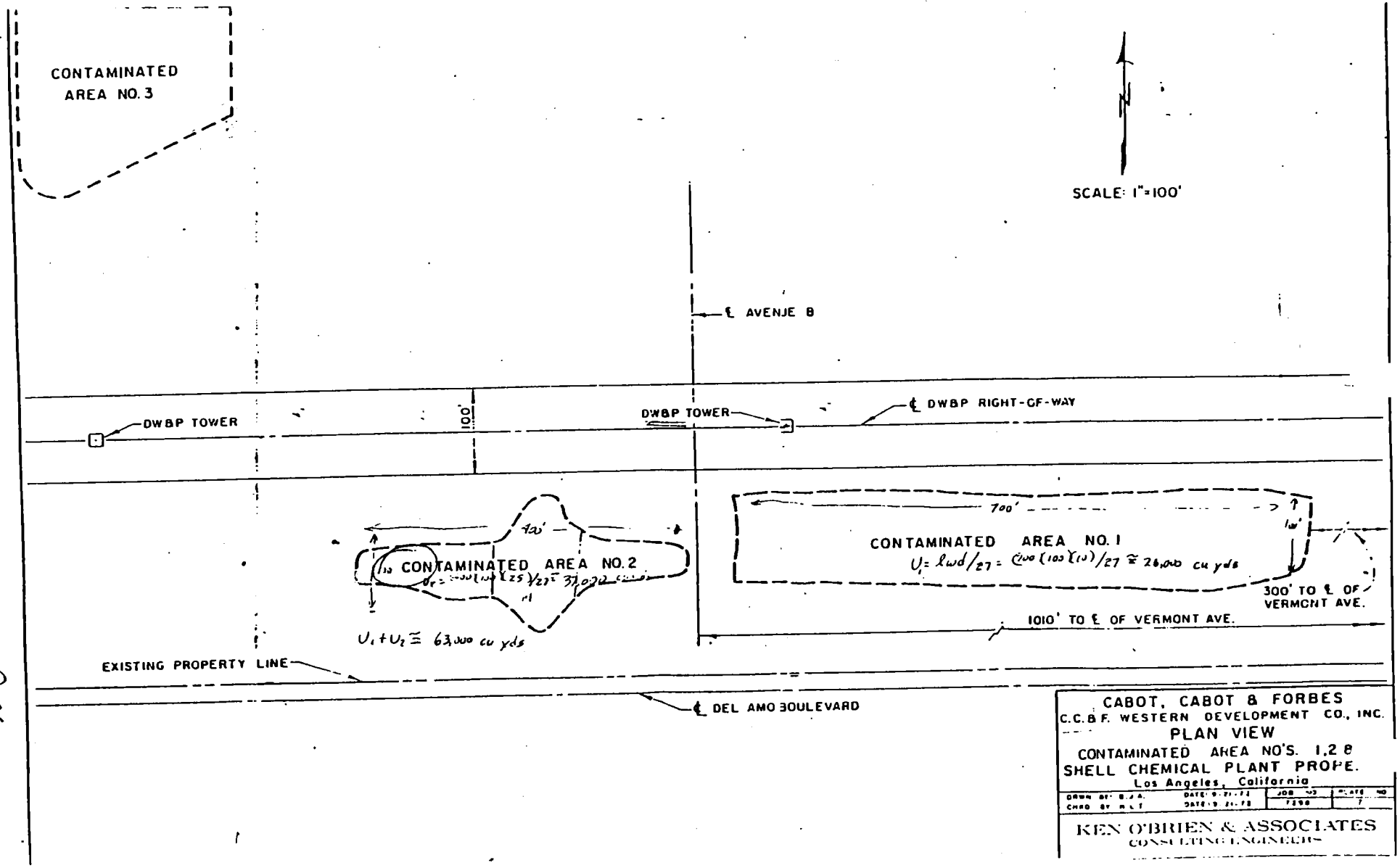

EXHIBIT

CABOT, CABOT & FORBES
C.C.B.F. WESTERN DEVELOPMENT CO., INC.
PLAN VIEW
CONTAMINATED AREA NO'S. 1,2 & 3
SHELL CHEMICAL PLANT PROPE.
Los Angeles, California

DRWN BY: B.J.A.	DATE: 9-21-73	JOB NO.	PLATE NO.
CHKD BY: R.L.T	DATE: 9-21-73	7390	7

KEN O'BRIEN & ASSOCIATES
CONSULTING ENGINEERS

EXHIBIT 5

Exhibit 5

WALD, HARKRADER & ROSS
Thomas H. Truitt
J. Brian Molloy
Mary Duffy Becker
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Telephone: (202) 828-1200

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Telephone: (213) 879-2600 or 277-1010

Attorneys for Plaintiff
Cadillac Fairview/California, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CADILLAC FAIRVIEW/CALIFORNIA, INC., a California corporation, Plaintiff, v. DOW CHEMICAL CO., a Delaware corporation, SHELL OIL CO., a Delaware corporation, INTERNATIONAL PROPERTY DEVELOPMENT CO., a California corporation, CCRF WESTERN DEVELOPMENT CO., INC., a California corporation, CABOT, CABOT & FORBES INTERIM CO., INC., a Massachusetts corporation, WILLIAM RUCKELSHAUS, Administrator of the Environmental Protection Agency of the United States of America, GERALD P. CARMEN, Administrator of the General Services Administration of the United States of America (successor-in-interest to Defense Plant Corporation, Reconstruction Finance Corporation and the Federal Facilities Corporation), UNITED STATES OF AMERICA, PETER RANK, the Director of the State Department of Health Services of the State of	No. 83 7996 CT (COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 AND OTHER FEDERAL STATUTES, DECEIT, BREACH OF WARRANTY, PUBLIC NUISANCE, ULTRA HAZARDOUS ACTIVITIES AND NEGLIGENCE DEMAND FOR JURY TRIAL

EXHIBIT 99

EXHIBIT 5

California, THOMAS HEINSHEIMER, Chairman of the Board of the South Coast Air Quality Management District of the State of California, JANE BRAY, Acting Chairman of the Board of the Regional Water Quality Control Board of the State of California for the Los Angeles Region, and DOUGLAS FERGUSON, President of the Central and West Basin Water Replenishment District of the State of California,

Defendants.

COMPLAINT

Plaintiff Cadillac Fairview/California, Inc. ("Cadillac Fairview") alleges that:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 5 U.S.C. §§ 701 et seq.; 28 U.S.C. §§ 1331, 1337, 1349, and 1361; 42 U.S.C. §§ 9606(a), 9607(g), and 9613(b); § 7 of the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418; § 14(a) of the Rubber Act of 1948, ch. 166, 62 Stat. 101; § 2(a)(6) of the Second War Powers Act of 1942, as amended, ch. 199, 56 Stat. 176; and jurisdiction pendent and ancillary thereto. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Cadillac Fairview has satisfied all jurisdictional prerequisites to filing this complaint.

2. Each of the defendants is found, or transacts business, or is otherwise subject to suit in the Central District of California.

STATEMENT OF THE CASE

3. In this action, plaintiff Cadillac Fairview seeks compensatory, declaratory and injunctive relief against defendant

EXHIBIT 100

EXHIBIT

based on the past disposal and continued presence of chemical substances, including hazardous wastes and hazardous substances, on property currently owned by Cadillac Fairview. Defendants are former owners, lessees or administrators of this property or former operators of a Government-owned rubber-producing facility thereon. As described in more detail below, these defendants, inter alia, disposed of or licensed and permitted the disposal of these chemical substances and failed to undertake any removal or remedial action concerning the property. These actions or failures to act have created a continuing nuisance that threatens the health, safety and welfare of the community, damages the value of property owned by Cadillac Fairview and property in the neighborhood, and threatens to result in substantial environmental damage and a risk of bodily injury and sickness. In addition, Cadillac Fairview seeks compensation from two defendants for damages based on deceit and breach of warranty.

FIRST CLAIM FOR DECLARATORY RELIEF

AGAINST ALL DEFENDANTS

4. Cadillac Fairview is a corporation duly organized and existing in good standing in the State of California. Cadillac Fairview currently owns certain real property (hereinafter referred to as the "Site") located near the intersection of Del Amo Boulevard and Vermont Avenue in the City of Torrance, California, and more fully described in Exhibit "A" attached hereto and made a part hereof by this reference.

5. Defendant Dow Chemical Co. ("Dow") is a corporation organized under the laws of the State of Delaware. Cadillac Fairview is informed and believes, and based thereon alleges,

that Dow, and others at Dow's direction, operated part of a Government-owned rubber-producing facility on the Site and disposed of chemical substances including hazardous wastes and hazardous substances on the Site, that Dow was aware at the time that it operated on the Site that such chemical substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

6. As used in this Complaint, the term "hazardous substances" shall have the meaning provided in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(14), and the term "hazardous waste" shall have the meaning provided in Section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(5).

7. Defendant Shell Oil Co. ("Shell") is a corporation organized under the laws of the State of Delaware. Shell owned the Site from April 19, 1955 to December 12, 1972. Cadillac Fairview is informed and believes, and based thereon alleges that Shell, and others at Shell's direction, disposed of chemical substances including hazardous wastes and hazardous substances on the Site, that Shell was aware at the time that it owned the Site that such chemical substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

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8. Defendant International Property Development Co. ("International") is a corporation organized under the laws of the State of California. International owned the Site from December 12, 1972, to August 21, 1974. Cadillac Fairview is informed and believes, and based thereon alleges, that International was aware at the time that it owned the Site that chemical substances including hazardous wastes and hazardous substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

9. Defendant CC&F Western Development Co., Inc. ("Western" is a corporation organized under the laws of the State of California. Western and its affiliates owned the Site from August 21, 1974 to October 28, 1976. Cadillac Fairview is informed and believes, and based thereon alleges, that Western was aware at the time that it owned the Site that chemical substances including hazardous wastes and hazardous substances had been disposed of on the Site, and that it failed and continues to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

10. Defendant Cabot, Cabot & Forbes Interim Co., Inc. ("Interim") is a corporation organized under the laws of the Commonwealth of Massachusetts. Cadillac Fairview is informed and believes, and based thereon alleges, that it is the successor in interest to the rights and obligations of International and Western.

11. As used hereinafter in this complaint, "CC&F" shall include International, Western, and Interim and the officers, employees and agents thereof.

12. Defendant Gerald P. Carmen is the Administrator of the General Services Administration ("GSA") of the United States of America. The Administrator of the GSA is the successor-in-interest to the Defense Plant Corporation, the Reconstruction Finance Corporation, and the Federal Facilities Corporation. The Defense Plant Corporation, the Reconstruction Finance Corporation and the Federal Facilities Corporation were federal corporations organized pursuant to Acts of Congress and empowered with the right "to sue and be sued." Pursuant to 59 Stat. 310, the Reorganization Plan No. 1 of 1957, and the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418, the Administrator of the GSA assumed all liabilities of these corporations at issue in this action.

13. Defendant United States of America is named as a defendant in this action pursuant to § 7 of the Act of August 30, 1961, Pub. L. No. 87-190, 75 Stat. 418, which states that "any suit, action, or other proceeding which, but for such dissolution, would be commenced by or against the [Federal Facilities] Corporation, shall be commenced by or against the United States in a Federal court of competent jurisdiction."

14. As hereinafter used in this complaint, "Administrator of the GSA" shall include United States of America, the Administrator of the GSA, the Defense Plant Corporation, the Reconstruction Finance Corporation, the Federal Facilities Corporation and the officers, employees, and agents thereof.

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15. From October 16, 1942 to April 15, 1955, the Site and a rubber-producing facility thereon were owned, operated, or administered by the Defense Plant Corporation, the Reconstruction Finance Corporation and the Federal Facilities Corporation. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances including hazardous wastes and hazardous substances on the Site, that these entities were aware or should have been aware at the time they owned, operated or administered the Site or the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment.

16. The authority to own, operate, administer, and inspect the operations of Government-owned rubber facilities was granted by the Second War Powers Act of 1942, as amended, ch. 199, 56 Stat. 176, and was extended in Public Law No. 24 of the 80th Congress, 2d Session. Under the Reconstruction Finance Corporation Act, as amended by the Act of June 25, 1940, ch. 427, 54 Stat. 572, the Reconstruction Finance Corporation was authorized to create or to organize a corporation with power to engage in the manufacture of synthetic rubber, and pursuant to that authority, the Defense Plant Corporation was created. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances

including hazardous wastes and hazardous substances on the Site, that these entities were aware, or should have been aware, at the time they owned, operated or administered the Site and the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or a threat of release of such chemical substances from the Site into the environment, all in contravention of their statutory obligations under these acts and their charters.

17. Under § 7 of the Rubber Act of 1948, ch. 166, 62 Stat. 101 and Exec. Order No. 9942, 13 Fed. Reg. 1823 (1948), the Reconstruction Finance Corporation was granted the authority to administer the operations of Government-owned rubber facilities, including

> all power and authority . . . to do all things necessary and proper in connection with and related to such production and sale, including but not limited to the power and authority to make repairs, replacements, alterations, improvements, or betterments to the rubber-producing facilities owned by the Government or in connection with the operation thereof and to make capital expenditures as may be necessary for the efficient and proper operation and maintenance of the rubber-producing facilities owned by the Government and performance of said powers, functions, duties, and authority.

By Exec. Order No. 10539, 19 Fed. Reg. 3827 (1954), the Federal Facilities Corporation was designated to replace the Reconstruction Finance Corporation in the performance of the functions described above. Cadillac Fairview is informed and believes, and based thereon alleges, that these entities licensed, permitted, authorized or otherwise allowed persons, including Dow, to dispose of chemical substances including hazardous wastes and hazardous substances, that these entities were aware, or should have been aware, at the time they owned, operated or administered the Site or the rubber-producing facility thereon that such chemical substances had been disposed of on the Site, and that they failed and continue to fail to undertake any removal, remedial or other action to prevent a release or threat of release of such chemical substances from the Site into the environment, all in contravention of their statutory obligations and their charters.

18. Defendant William Ruckelshaus is Administrator of the United States Environmental Protection Agency ("EPA") and has been delegated the authority by the President of the United States of America to administer the fund of monies ("the Superfund") established under CERCLA, to expend those funds for purposes of cleaning up sites that contain hazardous wastes and hazardous substances that pose a threat to health or the environment, and to determine whether proposed clean-up actions are consistent with the national contingency plan.

19. Defendant Peter Rank is the Director of the State Department of Health Services of the State of California and has the authority to initiate removal or remedial action in response to a release or threatened release of a hazardous substance in

California unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party. Defendant Thomas Heinsheimer is the Chairman of the Board of the South Coast Air Quality Management District. Defendant Jane Bray is the Acting Chairman of the Board of the Regional Water Quality Control Board for the Los Angeles Region. Defendant Douglas Ferguson is the President of the Central and West Basin Water Replenishment District.

20. Cadillac Fairview purchased the Site, pursuant to a written contract with Western, on October 28, 1976, as part of a much larger parcel of property. Cadillac Fairview intended to develop the entire parcel as a commercial and industrial center, and its intended purpose for the entire parcel was well known to CC&F at the time of the purchase.

21. When Cadillac Fairview purchased the parcel from Western, Cadillac Fairview had not been informed, and was not aware, that any hazardous wastes or hazardous substances had been disposed of on the Site. Cadillac Fairview has never produced, stored, or disposed of any chemical substance, hazardous waste, or hazardous substance on the Site, nor transported any chemical substance, hazardous waste or hazardous substance to the Site.

22. On February 19, 1981, Cadillac Fairview sold and conveyed a portion of the Site, together with adjacent real property to Western Waste Industries, a California corporation. On February 24, 1981, Western Waste Industries notified Cadillac Fairview that hazardous wastes had been disposed of on the Site. Prior to this date, Cadillac Fairview was unaware that any hazardous waste or hazardous substance had been disposed of on the

Site. Western Waste Industries demanded that Cadillac Fairview rescind the sale and conveyance of that portion of the Site which had been sold and conveyed to Western Waste Industries.

23. After extensive negotiations, Cadillac Fairview agreed to repurchase that portion of the Site which it had sold and conveyed to Western Waste Industries, and it agreed to convey additional real property adjacent to the Site to Western Waste Industries.

24. During these negotiations, hazardous wastes and hazardous substances were found to have been disposed of on a small portion of the additional real property adjacent to the Site which was conveyed to Western Waste Industries, but were believed to be contained in and confined to a shallow disposal pond close to the surface of the land. In partial consideration for the transaction referred to in Paragraph 23 of this Complaint, Western Waste Industries agreed to remove all of the hazardous wastes and hazardous substances from the shallow disposal pond on this additional real property (adjacent to the Site) which it acquired from Cadillac Fairview.

25. During December, 1982, Western Waste Industries began to remove the hazardous wastes and hazardous substances from the shallow disposal pond on the property (adjacent to the Site) which it had acquired from Cadillac Fairview. In the course of removing the hazardous wastes and hazardous substances from the shallow disposal pond on the property (adjacent to the Site) which it acquired from Cadillac Fairview, Western Waste Industries discovered that a portion of the hazardous wastes and hazardous

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substances had migrated into the soil below the shallow disposal pond.

26. Based upon subsequent tests and engineering analyses, Cadillac Fairview is now informed and believes, and based thereon alleges, that the chemical substances including hazardous wastes and hazardous substances which were deposited into disposal pits and ponds on the Site are also migrating into previously uncontaminated soil and may reach and contaminate fresh water aquifers below the surface of the Site. Cadillac Fairview is informed and believes that these fresh water aquifers are used both for industrial purposes and for drinking water. The contamination of these aquifers by the hazardous wastes and hazardous substances contained on the Site may cause substantial environmental damage and poses a threat of serious bodily injury and sickness to persons who consume drinking water obtained from this source. Such threats present an imminent and substantial danger to the public health. Moreover, if such migration continues unabated, any removal or remedial action will become increasingly more difficult and costly.

27. Cadillac Fairview is informed and believes, and based thereon alleges, that certain of the chemical substances including hazardous wastes and hazardous substances on the Site tend to vaporize and may contaminate the air quality in the residential, commercial and industrial areas surrounding the Site. Cadillac Fairview is informed and believes, and based thereon alleges, that many residents in the area have complained of respiratory ailments and other illnesses which they attribute to the chemical vapors purportedly escaping from the Site. Cadillac Fairview has no p

sent ability to determine, and does not intend by these allegations to admit or deny, that any such ailment or illness has been caused by wastes or substances disposed of on the Site.

28. Cadillac Fairview has at all times exercised due care with respect to chemical substances on the Site, taking into consideration the characteristics of the substances, in light of all relevant facts and circumstances, and has taken all reasonable precautions against foreseeable acts or omissions of third parties which could result in environmental damage or any release of the substances. Cadillac Fairview at its own expense has retained consulting engineers to conduct chemical analyses and testing of the chemical substances disposed of on the Site. Cadillac Fairview at its own expense has constructed a six-foot chain link fence around the portion of the Site on which chemical substances appear to have been disposed of, and has posted bilingual "no trespassing" signs at the Site. Cadillac Fairview at its own expense has also maintained a private guard service to prevent trespassing on the Site. Each and all of these precautions have been undertaken at the request of the State Department of Health Services in order to protect neighborhood residents fro bodily injury or sickness which might result from frequent direct contact with the substances.

29. Cadillac Fairview has filed a Notification of Hazardous Waste Site with the EPA, as required by Section 103(c) of CERCLA, 42 U.S.C. § 9603(c). Cadillac Fairview is informed and believes, and based thereon alleges, that Dow and Shell have also filed the notifications with the EPA required by Section 103(c) of CERCLA. Cadillac Fairview has received no information indica

ing that the Administrator of the GSA filed the notification required by Section 103(c) of CERCLA and based thereon alleges, that the Administrator of the GSA has not filed such notification. Cadillac Fairview has requested that the EPA approve and certify under the national contingency plan mandated by CERCLA a removal or remedial action plan for the Site, but has been told by representatives of the EPA that the Site is not on its priority list, that no such plan will be developed, nor will any intensive investigation of the Site be undertaken by the EPA for an extended period of time. Such failure on the part of the EPA to approve and certify a removal or remedial action plan for the Site is in contravention of its duty under CERCLA.

30. Cadillac Fairview is informed and believes, and based thereon alleges, that Western Waste Industries notified the State Department of Health Services in or about March 1981 that chemical substances had been disposed of on the Site. Since that date, other agencies of the State of California, including the South Coast Air Quality Management District, the California Regional Water Quality Control Board for the Los Angeles Region, and the Central and West Basin Water Replenishment District have been notified that chemical substances have been disposed of on the Site.

31. The State Department of Health Services has requested that Cadillac Fairview conduct chemical analyses and testing of the chemical substances, including the hazardous wastes and hazardous substances, disposed of on the Site, that Cadillac Fairview construct a new fence around the portion of the Site on which hazardous wastes and hazardous substances appear to have

been disposed of, that Cadillac Fairview post "no trespassing" signs at the Site, and that Cadillac Fairview maintain a private guard service to prevent trespassing on the Site. The Department of Health Services has not requested or required Dow, Shell, CC&F, or the Administrator of the GSA to undertake any removal or remedial action regarding the hazardous wastes and hazardous substances disposed of on the Site, notwithstanding that Dow, Shell, CC&F, and the Administrator of the GSA have the responsibility under CERCLA for all costs of removal or remedial action and for damages for injury to, destruction or loss of natural resources, resulting from the hazardous wastes and hazardous substances disposed of on the Site.

32. The EPA, the State Department of Health Services, the South Coast Air Quality Management District, the California Regional Water Quality Control Board for the Los Angeles Region, and the Central and West Basin Water Replenishment District each have an interest in the application of CERCLA and other federal and state environmental laws and regulations to the Site. Disposition of this action in their absence may leave Cadillac Fairview, Dow, Shell, CC&F and the Administrator of the GSA subject to a substantial risk of incurring multiple or otherwise inconsistent liabilities, in that an adjudication of the rights and liabilities of the parties may not then bind each and all of these governmental agencies in future administrative or judicial proceedings to which they are, or any of them is, a party. In their absence, complete relief cannot be accorded among the othe parties.

33. Cadillac Fairview has informed each and all of Dow,

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Shell, CC&F, and the Administrator of the GSA that the hazardous wastes and hazardous substances disposed of in the past and continuing to be present on the Site may have entered into the environment or have been emitted into the air or discharged into water and that these wastes and substances have begun to migrate from the area in which they were deposited, resulting in a release or a threatened release. Dow, Shell, CC&F, and the Administrator of the GSA are liable under CERCLA for any removal and remedial action that is necessary to prevent environmental damage, and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview has demanded that Dow, Shell, CC&F, and the Administrator of the GSA undertake all removal and remedial action that is necessary concerning the Site, but Dow, Shell, CC&F, and the Administrator of the GSA have each refused to undertake such actions. Dow, Shell, CC&F, and the Administrator of the GSA have further denied any liability for any removal or remedial action.

34. An actual controversy exists between Cadillac Fairview on the one hand, and Dow, Shell, CC&F, and the Administrator of the GSA, on the other hand, with respect to their relative right and duties to abate further environmental damage and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview seeks a declaration of these rights and duties and, in particular, seeks a judicial determination of the person who are responsible under CERCLA for the removal of hazardous wastes and hazardous substances from the Site or for any other

EXHIBIT

remedial, removal or other action required to abate further environmental damage and to eliminate any risk of bodily injury or sickness, resulting from the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview also seeks a judicial declaration that it has no liability under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or under any other applicable statute, regulation, or principle of common law, for costs of removal or remedial action incurred by the United States, the State of California, or any agencies or departments thereof or created thereby, or for any other costs of response incurred by any other person, or for damages for injury to, destruction of, or loss of natural resources, and has no obligation to take any removal or remedial action, by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site. Cadillac Fairview further seeks a judicial declaration that if the EPA or the State of California, or any agency or department thereof, chooses to incur costs of removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances from the Site, or if the EPA or the State of California causes others to incur them, then such costs are to be borne jointly and severally by each of the persons who owned the Site at the time of the disposal of hazardous waste and hazardous substances on the Site and by the persons who arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous wastes and hazardous substances on the Site, including Dow, Shell, and the Administrator of the GSA.

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SECOND CLAIM FOR RELIEF FOR DAMAGES AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

35. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 34, inclusive, of this Complaint.

36. Cadillac Fairview has incurred costs, including costs of chemical analyses and testing for chemical substances including hazardous wastes and hazardous substances disposed of on the Site, of constructing a fence around the portion of the Site on which hazardous wastes and hazardous substances appear to have been disposed of, of posting "no trespassing" signs at the Site, and of maintaining a private guard on a twenty-four hour basis to prevent trespassing on the Site, which constitute necessary costs, including but not limited to necessary costs of response consistent with the national contingency plan. The amount of these necessary costs of response is not precisely ascertainable at this time, but is in excess of Seventy Thousand Dollars ($70 000).

37. Cadillac Fairview has presented a claim to Dow, Shell, CC&F, and the Administrator of the GSA for its necessary costs, including but not limited to necessary costs of response consistent with the national contingency plan, but each and all of Dow, Shell, CC&F, and the Administrator of the GSA have failed and continue to fail, contrary to law, to satisfy the claim.

THIRD CLAIM FOR RELIEF FOR AN INJUNCTION AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

38. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 37,

inclusive, of this Complaint.

39. Cadillac Fairview has demanded that Dow, Shell, CC&F, and the Administrator of the GSA perform all necessary removal or remedial action concerning the Site consistent with the national contingency plan to prevent the further release or threat of release of chemical substances including hazardous wastes and hazardous substances into the environment, but Dow, Shell, CC&F, and the Administrator of the GSA have failed and continue to fail to perform any such action, or to accept any responsibility for any injury, including but not limited to injury to natural resources resulting from the substances disposed of on the Site.

40. Cadillac Fairview is informed and believes, and based thereon alleges, that removal or remedial action concerning the Site consistent with the national contingency plan is urgently necessary due to the risk of irreparable injury, including substantial environmental damage and serious bodily injury and sickness, resulting from the substances disposed of on the Site. Such risk constitutes an imminent and substantial danger to public health and welfare. Cadillac Fairview has no adequate remedy at law to avoid the injury which has occurred, and which will continue to occur, if an injunction is not issued requiring Dow Shell, CC&F, and the Administrator of the GSA to remove the chemical substances including hazardous wastes and hazardous substances from the Site or to take other appropriate remedial, removal or other action to prevent further injury to the environment.

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EXHIBIT

FOURTH CLAIM FOR RELIEF FOR DAMAGES BASED ON DECEIT AGAINST DEFENDANTS WESTERN AND INTERIM

41. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 40, inclusive, of this Complaint.

42. Cadillac Fairview is informed and believes, and based thereon alleges, that while Western owned the Site, Western learned that the Site was contaminated by chemical substances including hazardous wastes and hazardous substances.

43. At the time that Cadillac Fairview purchased the Site from Western, Cadillac Fairview was unaware that hazardous wastes and hazardous substances had been disposed of on the Site. Western never informed Cadillac Fairview that hazardous wastes and hazardous substances had been disposed of on the Site. The hazardous wastes and hazardous substances were not detectable in any reasonable inspection. Cadillac Fairview would not have purchased the Site if it had been aware of the hazardous wastes and hazardous substances, in part because such a purchase exposed Cadillac Fairview to unexpected claims, litigation and potential liability regarding the Site, including potential liability for removal and remedial action concerning the Site.

44. Cadillac Fairview is informed and believes, and based thereon alleges, that at the time that Cadillac Fairview purchase the Site from Western, Western knew that Cadillac Fairview was unaware of the hazardous wastes and hazardous substances, and knew that Cadillac Fairview would not have purchased the Site from Western if it had been aware of them. Western had a duty t

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EXHIBIT

inform Cadillac Fairview that the Site contained hazardous wastes and hazardous substances.

45. Cadillac Fairview has been damaged by Western's fraudulent representations and nondisclosures in an amount which cannot be precisely ascertained at the present time but is not less than the sum of Seventy Thousand Dollars ($70,000) and includes all of the expenses incurred and to be incurred by Cadillac Fairview as a consequence of the deceit, including but not limited to those necessary to protect the environment and the public from the hazardous wastes and hazardous substances on the Site, as well as the expenses incurred and to be incurred by Cadillac Fairview in this action.

FIFTH CLAIM FOR RELIEF FOR DAMAGES BASED ON BREACH OF EXPRESS WARRANTY AGAINST DEFENDANTS WESTERN AND INTERIM

46. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 45, inclusive, of this Complaint.

47. Western and its affiliates executed and delivered to Cadillac Fairview a "Certificate of Seller" on or about March 17, 1976, and a "Purchase Agreement" on or about October 28, 1976, each and both of which contained representations and warranties concerning the Site to the effect that Western was unaware of any undisclosed adverse soils conditions affecting the Site. Western failed to disclose that the Site contained hazardous wastes and hazardous substances.

48. The failure of Western to disclose the presence of hazardous wastes and hazardous substances on the Site was a

breach of the express representations and warranties contained in the "Certificate of Seller" and the "Purchase Agreement."

49. Cadillac Fairview gave timely written notice to Western that the Site appeared to be contaminated with hazardous wastes and hazardous substances and that Cadillac Fairview intended to assert a claim for damages against Western on account of the breach by Western of its representations and warranties contained in the "Certificate of Seller" and "Purchase Agreement."

50. The damages sustained by Cadillac Fairview as a proximate result of the breach by Western of its representations and warranties contained in the "Certificate of Seller" and "Purchase Agreement" cannot be precisely ascertained at the present time but are not less than the sum of Seventy Thousand Dollars ($70,000) and include all of the expenses incurred and to be incurred by Cadillac Fairview as a consequence of the breach including but not limited to those necessary to protect the environment and the public from the hazardous wastes and hazardous substances on the Site, as well as the expenses incurred and to be incurred by Cadillac Fairview in this action.

SIXTH CLAIM FOR DECLARATORY RELIEF BASED ON PUBLIC NUISANCE AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

51. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 50, inclusive, of this Complaint.

52. The past disposal and continued presence of chemical substances including hazardous wastes and hazardous substances on the Site have created a public nuisance, in that they threaten

the health, safety and welfare of the community, damage the value of property in the neighborhood, and interfere with the full and free use of property in the neighborhood. Cadillac Fairview has suffered a special injury from this public nuisance, because the Site has been rendered worthless and because Cadillac Fairview is exposed to potential liability to abate the nuisance and otherwise to render the Site in compliance with applicable state and federal laws and regulations, and is also exposed to potential liability for injuries to other persons and property.

53. The conditions at the Site have been created by the intentional, knowing, willful, negligent and ultra-hazardous acts of Dow, Shell, CC&F and the Administrator of the GSA in that these defendants (except for CC&F) disposed of, or licensed and permitted the disposal of, chemical substances, including hazardous wastes and hazardous substances, at the Site and all of these defendants (including CC&F) failed to take measures to prevent further migration or threat of migration of these substances. Dow, Shell, CC&F and the Administrator of the GSA have the liability for, and the duty to indemnify Cadillac Fairview with respect to, any resulting injury, damages, liability, or duty of abatement.

54. An actual controversy exists between Cadillac Fairview, on the one hand, and Dow, Shell, CC&F, and the Administrator of the GSA, on the other hand, with respect to their relative rights and duties to abate this public nuisance and to pay for the injuries, damages, and liabilities resulting therefrom. Cadillac Fairview seeks a judicial declaration to determine the respective and relative duties of Dow, Shell, CC&F, and the Administrator of

the GSA to abate this public nuisance and the right of Cadillac Fairview to seek indemnity from Dow, Shell, CC&F, and the Administrator of the GSA for any costs incurred to abate this public nuisance and for any injuries, damages or liabilities incurred in connection therewith.

SEVENTH CLAIM FOR DECLARATORY RELIEF BASED ON ULTRAHAZARDOUS ACTIVITIES AGAINST DEFENDANTS DOW, SHELL, AND THE ADMINISTRATOR OF THE GSA

55. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 54, inclusive, of this Complaint.

56. The disposal of chemical substances including hazardous wastes and hazardous substances on the Site by Dow, Shell and the Administrator of the GSA was an abnormally dangerous activity which created a high degree of risk to the persons and property of others, a risk unlikely to be eliminated by the exercise of due care, and which was not a matter of common usage. Cadillac Fairview has never carried on any such activity.

57. An actual controversy exists between Cadillac Fairview on the one hand, and Dow, Shell and the Administrator of the GSA on the other hand, with respect to their relative rights and duties to take the removal and remedial actions necessary to abate the risk of injury to other persons and property resulting from the disposal of hazardous wastes and hazardous substances on the Site. Cadillac Fairview seeks a judicial declaration to determine the respective and relative duties of Dow, Shell and the Administrator of the GSA to take the removal and remedial actions necessary to abate the risk of injury to other persons

and property resulting from the disposal of hazardous wastes and hazardous substances on the Site.

EIGHTH CLAIM FOR DECLARATORY RELIEF BASED ON NEGLIGENCE AGAINST DEFENDANTS DOW, SHELL, CC&F, AND THE ADMINISTRATOR OF THE GSA

58. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 57, inclusive, of this Complaint.

59. Cadillac Fairview is informed and believes, and based thereon alleges, that defendants Dow, Shell and the Administrator of the GSA acted negligently in disposing of or permitting the disposal of the hazardous wastes and hazardous substances on the Site.

60. Cadillac Fairview is informed and believes, and based thereon alleges, that defendants Shell, CC&F, and the Administrator of the GSA negligently maintained the Site by permitting the continued presence and migration of hazardous wastes and hazardous substances disposed of on the Site, and negligently failed to undertake any removal or remedial action concerning the Site.

61. Cadillac Fairview at all times has exercised due care with respect to the hazardous wastes and hazardous substances disposed of on the Site.

NINTH CLAIM FOR RELIEF FOR INJUNCTION AGAINST DEFENDANT ADMINISTRATOR OF THE EPA

62. Cadillac Fairview hereby repeats and realleges each and all of the allegations contained in paragraphs 1 through 40, inclusive, of this Complaint.

63. Defendant Administrator of the EPA has been delegated

EXHIBIT 5

EXHIBIT 123

the authority to administer the Superfund established under CERCLA, to expend those funds for purposes of cleaning up sites that contain hazardous substances and that pose, inter alia, an imminent and substantial danger to the public health or welfare, and to determine whether proposed clean-up actions are consistent with the national contingency plan.

64. Defendant Administrator of the EPA has failed to approve and certify under the national contingency plan mandated by CERCLA a removal or remedial action plan for the Site, in contravention of his statutory duty under CERCLA.

65. Cadillac Fairview is informed and believes, and based thereon alleges that a removal or remedial action concerning the Site consistent with the national contingency plan is urgently necessary because of the imminent and substantial danger to the public health or welfare and risk of irreparable injury resulting from the substances disposed of on the Site. Cadillac Fairview has no adequate remedy at law to avoid the injury which has occurred, and which will continue to occur, if an injunction is not issued requiring the Administrator of the EPA to approve and certify a removal or remedial plan for the Site or to take other appropriate action to prevent further injury to the environment.

Wherefore, Cadillac Fairview prays for judgment as follows:

1. For a declaratory judgment:

A. That Dow, Shell, CC&F, and the Administrator of the GSA are responsible under CERCLA, and any other applicable statute, regulation, or principle of common law: (i) for such removal or remedial action as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to t

EXHIBIT 124

environment by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site, and to prevent or minimize the release of hazardous wastes and hazardous substances from the Site so that they do not migrate to cause substantial danger to present or future public health or welfare or to the environment, and (ii) for damages for injury to, destruction of, or loss of natural resources by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site.

B. That Cadillac Fairview has no liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or under any other applicable statute, regulation, or principle of common law, for costs of removal or remedial action incurred by the United States Government or the State of California, or for any other costs of response incurred by any other person, or for damages for injury to, destruction, or loss of natural resources, and has no obligation to take any removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site.

C. That if the United States Government or the State of California incurs costs, or causes others to incur costs, of removal or remedial action by reason of or relating to the hazardous wastes and hazardous substances disposed of on the Site, such costs are to be borne jointly and severally by the persons who owned the Site at the time of the disposal of hazardous wastes and hazardous substances on the Site and by the persons who arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous wastes

EXHIBIT 125

and hazardous substances at the Site; and that such persons include Dow, Shell, and the Administrator of the GSA.

D. Otherwise declaring the rights and duties of the respective parties.

2. For compensatory damages against Dow, Shell, CC&F, and the Administrator of the GSA in an amount to be determined at trial.

3. For an injunction directing Dow, Shell, CC&F, and the Administrator of the GSA to perform all necessary removal and remedial action concerning the Site consistent with the national contingency plan to prevent further releases of hazardous wastes and hazardous substances into the environment.

4. For an injunction directing Dow, Shell, CC&F and the Administrator of the GSA to abate the nuisance at the Site caused by the presence, migration, and threat of migration of hazardous wastes and hazardous substances, by taking such actions as the court shall find to be necessary and sufficient to completely and permanently abate the migration and threat of migration of those hazardous wastes and hazardous substances.

5. For an injunction directing the Administrator of the E to approve and certify a removal or remedial plan for the Site consistent with the national contingency plan to prevent further injury to the environment.

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6. That Cadillac Fairview be awarded the costs and disbursements of this action.

7. For such other relief as the Court deems proper.

Dated: December 9, 1983.

WALD, HARKRADER & ROSS
Thomas H. Truitt
J. Brian Molloy
Mary Duffy Becker

IRELL & MANELLA
Thomas W. Johnson, Jr.

By: _____
Thomas W. Johnson, Jr.

Attorneys for plaintiff
Cadillac Fairview/California, Inc.

EXHIBIT 5

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DEMAND FOR JURY TRIAL

Plaintiff Cadillac Fairview/California, Inc. hereby demands trial by jury.

Dated: December 9, 1983.

Respectfully submitted,

WALD, HARKRADER & ROSS
Thomas E. Truitt
J. Brian Molloy
Mary Duffy Becker

IRELL & MANELLA
Thomas W. Johnson, Jr.

By: Thomas W. Johnson
Thomas W. Johnson, Jr.

Attorneys for plaintiff
Cadillac Fairview/California, Inc.

EXHIBIT

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That certain real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Parcel B of Parcel Map Exemption No. 2695, as referenced in that certain Covenant and Agreement for Lot Line Adjustment recorded on April 5, 1983, as Instrument No. 83-375486, Official Records of said County, said Parcel B being more particularly described as follows:

a. That certain portion of Lot 13 and that portion of Rosemead Street (Vacated) adjoining said Lot 13 as said Lot and street are shown on that certain map entitled "Tract No. 4671" recorded in Book 56 of Maps, at Pages 30 and 31, Official Records of said County, said portion being more particularly described as that portion of Lot 13 and Rosemead Street (Vacated) lying easterly of a line parallel with and perpendicularly distant 100.00 feet westerly of the centerline of Rosemead Street (Vacated) as said lot and street are shown on said Map entitled "Tract No. 4671", excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

b. Lot 36 as said lot is shown on said Map entitled "Tract No. 4671" excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

c. The westerly 62 feet of Lot 37 as said Lot is shown on said Map entitled "Tract No. 4671", excepting therefrom the northerly 100.00 feet of the hereinabove described parcel.

Exhibit "A"

Ex 6

CABOT, CABOT & FORBES
911 WILSHIRE BOULEVARD, SUITE 1010, LOS ANGELES, CALIFORNIA 90017

TED TOMASOVICH
VICE PRESIDENT

(AREA CODE 213) 626-8171

August 29, 1983

Mr. Howard Mann
Andrex Development Co.
3000 Ocean Park Blvd., #1004
Santa Monica, California

Re: Harbor Technology Center

Dear Howard:

On July 19, 1983, we received a letter from the Department of Health and Services indicating that the staff had reason to believe that our property was a hazardous waste property. We disagreed vehemently and embarked on a testing program to prove we were right.

On August 26, 1983 we received a letter from John A. Hinton, Regional Administrator of the Southern Region for the Hazardous Waste Management Branch. Mr. Hinton's letter states that "there is no reason to believe that the subject property is a hazardous waste property."

I have enclosed copies of correspondence regarding this issue.

Sincerely,

Ted Tomasovich

Ted Tomasovich
/m

Enc.

cc: M. Rushman
E. Ball
P. Blumer

Exhibit 3
7-31-90

130 EXHIBIT

...FORNIA—HEALTH AND WELFARE A...
...TMENT OF HEALTH SERV...ES
...BROADWAY, ROOM 7128
...S, CA 90012
...7380

GEORGE DEUKMEJIAN, Co...

July 19, 1983

Peter Bloomer
Cabot, Cabot & Forbes
Torrance Properties Inc.
19700 South Vermont
Torrance, California 90502

Dear Mr. Bloomer:

CHARACTERIZATION OF FORMER SHELL CHEMICAL PLANT SITE
SUSPECTED DISPOSAL OF HAZARDOUS WASTES

This is to confirm the June 13, 1983 discussions between Roy Thielking of my staff and Messrs Robert E. Pyers of your company and Jim Sapp of Pacific Soils Engineering, Inc., during an inspection of your property between Vermont and Hamilton Streets and north of Del Amo Boulevard, Los Angels, vicinity of Torrance, California, and the subsequent telecon between Roy Thielking and yourself.

Review of aerial photographs and other available data relative to the former Shell Oil/Shell Chemical Company istes in Torrance indicate that hazardous wastes may have been disposed of on your property.

Ken O'Brien & Associates Engineering report dated September 22, 1982, prepared for Cabot, Cabot & Forbes disclosed that log of Borings Nos. 8,9, and 10 described gassy and odorous materials at depths of 18 to 60 feet. The plan locations of Borings Nos. 9, 10, and 11 cannot be determined from the drawings that accompany our copy of that report.

Aerial photos dated June 17, 1947, July 15, 1956, and September 22, 1965, disclose an oil storage tank surrounded by a dike which occupied the area of your Lot No. 61, which lot, by your account, was recently exvavated to a depth of 14 feet and re-graded with clean soil.

Pursuant to Sections 25220 and 25221 Article 11, Chapter 6.5, Division 20, California Health and Safety Code (copy attached) staff of this Department has reason to believe that your property may be a hazardous waste property as defined in Section 25117.3 of the Code.

3A
Welch
7-31-90

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3A

In order that these issues may be discussed more fully, it is requested that you contact Roy Thielking of my staff so that a meeting among the interested parties may be convened at a time and place of mutual convenience.

Sincerely,

for Miller E. Chambers

John A. Hinton, P.E.
Regional Administrator
Southern Region
Permits, Surveillance and
Enforcement Section
Hazardous Waste Management Branch

cc: Department of Health Services,OPPD
Attn: Kent Stoddard

California Regional Water Quality Control Board, Los Angeles Region

Enclosure

SOUTH BAY

LOS ANGELES TIMES - Aug. 21, 1983

Tests at Old Dump Detect Little Hazard

County Finds No Toxic Seepage Into Home Areas

By JULIO MORAN, *Times Staff Writer*

County tests of tap water and soil in the area around an old petrochemical dump in the Los Angeles city strip near Torrance have shown no signs that chemicals have seeped into nearby residential areas.

Richard Denneriine, head of occupational health and hazardous waste with the county Department of Health Services, said that an error in testing was probably the reason that at least eight test samples showed high amounts of lead and zinc. He said medical officials do not believe the dump poses a health danger.

Denneriine said re-testing produced lower lead and zinc levels in some samples. "Zinc as a metal is considered a nuisance, not highly toxic as it would be in fumes," he said. "There were no fumes."

County officials also tested for three other chemicals—naphthalene, styrene and diphenyl—and no detectable amounts of the chemicals were found in the soil or water.

The 214-acre site, owned by Cadillac Fairview, a Canadian-based development company, is one of seven South Bay toxic

complained about [illegible]
is still concerned.

"I am encouraged by these test results but will not be satisfied until the eight questionable samples are further investi

'I will continue to monitor the situation because of its vital significance . . .'

gated and the entire Cadillac Fairview dump is completely cleaned," Hahn said in a prepared statement. "I will continue to monitor the situation because of its vital significance to the health and welfare of our community."

The Board of Supervisors has requested that the state Department of Health Services completely clean up the dump, located along Del Amo Boulevard between Vermont and Normandie avenues.

The site was a World War II synthetic rubber plant. Dow Chemical Co. and later Shell Chemical Co. operated the plant at various times, dumping wastes into what are actually two bogs.

The bogs are covered with dirt and the plant was torn down several years ago to make way for an industrial park. Since the hazardous wastes were discovered, the dirt cover has been increased and the area fenced to reduce potential health dangers.

The state has not said when the Cadillac Fairview site will be completely cleaned up.

Nearly $400,000 out of the state's $10-million-a-year "Superfund" for toxic wastes cleanups was recently earmarked to completely clean up the Capri Pumping site in East Los Angeles by the middle of next year.

Seven of the 10 Los Angeles County sites listed by the state are in the South Bay's Los Angeles city strip area. Most of the sites are old landfills and sumps containing wastes dumped by the area's oil refining and manufacturing plants decades ago, at a time when, as one health official put it, [illegible] even in our

CABOT, CABOT & FORBES
911 WILSHIRE BOULEVARD, SUITE 1010, LOS ANGELES, CALIFORNIA 90017

EDWARD J. BALL, JR. (AREA CODE 213) 626-8171

August 25, 1983

Mr. John A. Hinton, P.E.
Regional Administrator
STATE OF CALIFORNIA
Department of Health Services
Hazardous Waste Management Branch
107 South Broadway, Room 7128
Los Angeles, California 90012

Dear John:

Attached is the summary you requested of the test results IT ANALYTICAL SERVICES prepared from samples obtained from CC&F Torrance Properties, Inc.'s ("CC&F") property in South Bay. The odor panel, boring sample and solid surface sample test results are also attached. Location maps and boring logs have been prepared which indicate the location and elevation of each test.

As we had discussed previously; CC&F purchased the property from Shell Oil in 1972. CC&F held the site for three years until 1975, when we sold it to Golden Eagle Refinery. During this period CC&F did not develop any portion of the site, nor was any dumping or tresspassing allowed. From 1975 to 1982 Golden Eagle owned the site. During this period no dumping took place and no development was undertaken. In 1982 CC&F repurchased the site and commenced demolition and grading during the last quarter of 1982.

Prior to commencing work CC&F retained Royce Donkle. Royces' first job out of college in 1942 was with Shell Oil on this site. The plant was still under construction and Royce personally observed much of the new construction. Royce worked on the site until Shell closed the plant, at which time he retired and became a consultant to Cadillac Fairview and CC&F.

Royce has indicated to you and CC&F that hazardous wastes were not disposed of on this site. He did indicate that a war time dump site was located west of Vermont and immediately north of Del Amo Boulevard (Cadillac-Fairview site). The site Royce is referring to is listed with the State as a Hazardous Waste Site.

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During the grading operation CC&F became aware of an area that contained odoriferous soils. On July 15, 1983 CC&F stopped all work in this area and retained IT ANALYTICAL SERVICES to characterize the soil for any hazardous wastes. Those test results and their respective locations are attached. IT ANALYTICAL SERVICES assured CC&F that: 1) The compounds found in the soil were not regulated by the State or the Federal Government. 2) The concentrations of the compounds were extremely low and almost undetectable. The odors that were being emmitted from the soils were due to the volatile nature of the chemicals that were present. These chemicals, although of low concentrations, were alcohol based and once exposed, evaporated within a matter of hours. IT ANALYTICAL SERVICES assured CC&F that the odorous conditions were not caused by priority pollutants or regulated compounds.

CC&F continued grading and mixing the soil. Based on our discussions with you and your staff, CC&F decided, on a voluntary basis, to take additional tests in the area. On July 1, 1983 four borings were taken on the site. All the borings indicated no extractable semi-volatile organic compounds within the top 25 feet. The concentrations of the identifiable compounds found 50 feet down were very low.

The tests that IT ANALYTICAL SERVICES performed substantiate Royce Donkle's and CC&F's claims that the site was not and is not now a hazardous waste site.

CC&F has incurred considerable expense in testing fees and time in identifying the odoriferous materials we encountered. We have taken it one step further - we did additional testing in areas your staff suggested. All the testing to date has failed to produce any compounds of concentrations that would be considered hazardous to human health.

Miller Chambers' (Department of Health Services, Hazardous Waste Management Branch) letter of July 19, 1983 indicates that aerial photos disclose an oil storage tank surrounded by a dike. Royce Donkle confirms Mr. Chambers' observation. Royce indicates that a fuel oil tank was located on Lot 61. I am not sure what the significance of a fuel oil tank is - but IT ANALYTICAL SERVICES took samples (Boring #1) from Lot 61 and found no evidence of hazardous wastes.

With regard to the Ken O'Brian & Associates Engineering Report dated September 22, 1982, I am not aware of the O'Brian report. CC&F did retain Pacific Soils Engineering, Inc. to perform Soils Engineering on the site. Pacific Soils Boring No's 9, 11, 21 and 22 found evidence of malodorous conditions. IT ANALYTICAL SERVICES duplicated Boring No's 9, 21 and 22 and found no evidence of hazardous wastes.

EXHIBIT

CC&F has cooperated with Department of Health Services staff and would appreciate your assistance in resolving this matter. Continuing studies and testing of the site might be appropriate if CC&F had uncovered any compounds of sufficient concentrations to be hazardous, but this is not the case. The history of the site and the tests performed to date substantiate CC&F's claim that our site is not a hazard waste site.

John, we would appreciate some assistance in resolving this at the earliest possible time.

I will be calling you to follow up. Thank you for your time and effort.

Sincerely,

Edward J. Ball, Jr.

EJB:lmy

cc: Miller Chambers

EXHIBIT

IT ANALYTICAL SERVICES
WEST COAST TECHNICAL SERVICE DIVISION
17605 Fabrica Way • Cerritos, California 90701 • 213-921-9831

CERTIFICATE OF ANALYSIS

Cabot Cabot & Forbes
211 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Ed Ball

DATE REPORTED: August 15, 1983
PROJECT CODE: 26938/yks
ORDER NUMBER: Verbal

Summary Report of Job Numbers 26554 & 26411

On 15 June 1983 we obtained six surface samples. Three of the samples were analyzed for pH, and oil and grease. The soils were slightly alkaline and contained trace or undetectable levels of oil. The other three samples were analyzed for volatile organics. A variety of non-regulated hydrocarbons were found at levels of oil ~200 ppm. No regulated materials were noted. Details are given in our report, Job Number 26411 (report dated 15 July 1983).

On 1 July 1983 we obtained ten additional boring samples. These were all analyzed for extractable, semi-volatile organic compounds. In eight of the samples, no organics were detected above 0.2 ppm. In one other sample, one unidentifiable compound was detected at approximately 6 ppm. In the remaining sample, four non-regulated aromatic compounds were seen at 0.8 - 10 ppm and some oil (20 ppm) was detected. No regulated materials were noted. Details are given in our report, Job Number 26554 (report dated 25 July 1983).

Two of the boring samples were analyzed by odor panel. The common descriptors are given in the table below. In overall intensity, boring #3-EL-24 was more intense than boring #4-EL-23.5.

Sample	Odor Descriptors
Boring 3-EL-24	Strong, musty, some pungente
Boring 4-EL-23.5	Heavy oxidized petroleums, strong, chemical

Neil E. Spingarn

EXHIBIT 6

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Neil E. Spingarn, Ph.D.
Title: Staff Chemist
Approved By

IT ANALYTICAL SERVICES
WEST COAST TECHNICAL SERVICE DIVISION
17605 Fabrica Way • Cerritos, California 90701 • 213-921-9831

CERTIFICATE OF ANALYSIS

Cabot Cabot & Forbes
911 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Ed Ball

DATE REPORTED: July 25, 1983
PROJECT CODE: 26554/yks
ORDER NUMBER: VERBAL

Ten (10) soil samples labeled as follows:

Bore 1 EL-6	Bore 3 EL-1
Bore 1 EL-19	Bore 3 EL-24
Bore 2 EL-3	Bore 4 EL-1.5
Bore 2 EL-17	Bore 4 EL-21.5
Bore 2 EL-28	Bore 4 EL-23.5

The soil samples were analyzed by combined gas chromatography-mass spectroscopy for methylene chloride extracted base/neutral and acid semi-volatile compounds. A 30m by 0.32mm DB5 fused silica capillary column, temperature programmed from 30°C (hold for 4 min) to 300°C at 10°C/min, was utilized for the analyses. The results are listed in Table I.

EXHIBIT 6

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Michael Duday
Michael Duday
Title: Senior Chemist

Table I: GC/MS Analysis

Sample	Compound Identification	Concentration (Micrograms/kilogram)
Bore 1 EL-6	No compounds detected	ND<200
Bore 1 EL-19	No compounds detected	ND<200
Bore 2 EL-3	No compounds detected	ND<200
Bore 2 EL-17	No compounds detected	ND<200
Bore 2 EL-28	No compounds detected	ND<200
Bore 3 EL-1	No compounds detected	ND<200
Bore 3 EL-24	Unidentified compound	6000
	Other semivolatile compounds	ND<200
Bore 4 EL-1.5	No compounds detected	ND<200
Bore 4 EL-21.5	No compounds detected	ND<200
Bore 4 EL-23.5	Trimethylnaphthalenes	10000
	Methylphenanthrene	2000
	Dimethylnaphthalenes	1000
	Phenanthrene	800
	C_{10}-C_{14} Aliphatic hydrocarbons	20000
	Other semivolatile compounds	ND<200

ND - This compound was not detected the limit of detection for this analysis is less than the amount stated in the table above.

IT ANALYTICAL SERVICES
WEST COAST TECHNICAL SERVICE DIVISION
17605 Fabrica Way • Cerritos, California 90701 • 213-921-9831

CERTIFICATE OF ANALYSIS

Cahat Cahat & Forbes
c/o Pacific Soils Engr.
911 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Ed Ball

DATE REPORTED: July 15, 1983
PROJECT CODE: 26411/yks
ORDER NUMBER: VERBAL

Six (6) solid samples.

Three samples were analyzed for pH and oil/grease content. These results are given in Table I. The other samples were analyzed for volatile organics. These results are in Table II. None of the compounds listed in Table II are specifically regulated as EPA priority pollutants or in the California Assessment Manual.

Table I

Sample	pH	Oil & Grease (mg/kg)
#1, Green sand	7.88	ND 70
#2, Green sand	8.49	ND 70
#3, Clay	7.60	70

Table II. Volatile Organics

Compound	Concentration (ug/g) Brown	Green	Lot 64/SW Corner
C_{12} Branched hydrocarbon	ND 0.005	100	200
C_8 Branched hydrocarbon	ND 0.005	60	70
Dimethylcyclohexane	0.2	50	70
2,4,4-Trimethyl-2-pentene	0.4	50	50
1-Ethyl-2-methyl cyclohexane	ND 0.005	40	50
2-Methyl-2-propanol	0.5	ND 0.5	ND 0.5
2-Methyl-2-butanol	0.1	ND 0.5	ND 0.5
Unidentified compounds	ND 0.005	50	50

ND - This compound was not detected; the limit of detection for this analysis is less than the amount stated in the table above.

Neil F. Spingarn, Ph.D.
Title: Staff Chemist

Approved By

EXHIBIT 6

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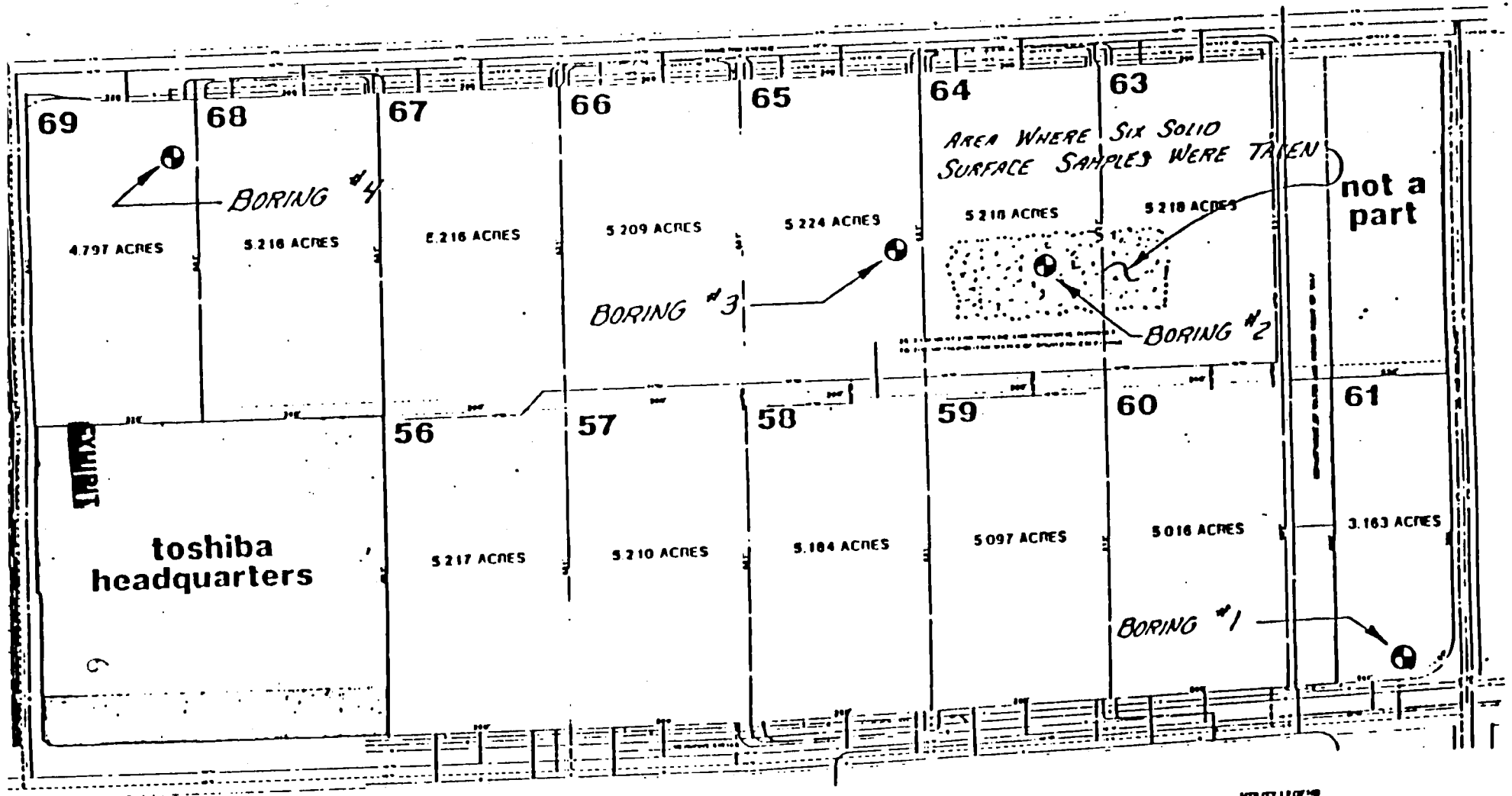
SURFACE SAMPLES [illegible] ANALYZED FOR CABOT, CABOT & FORBES

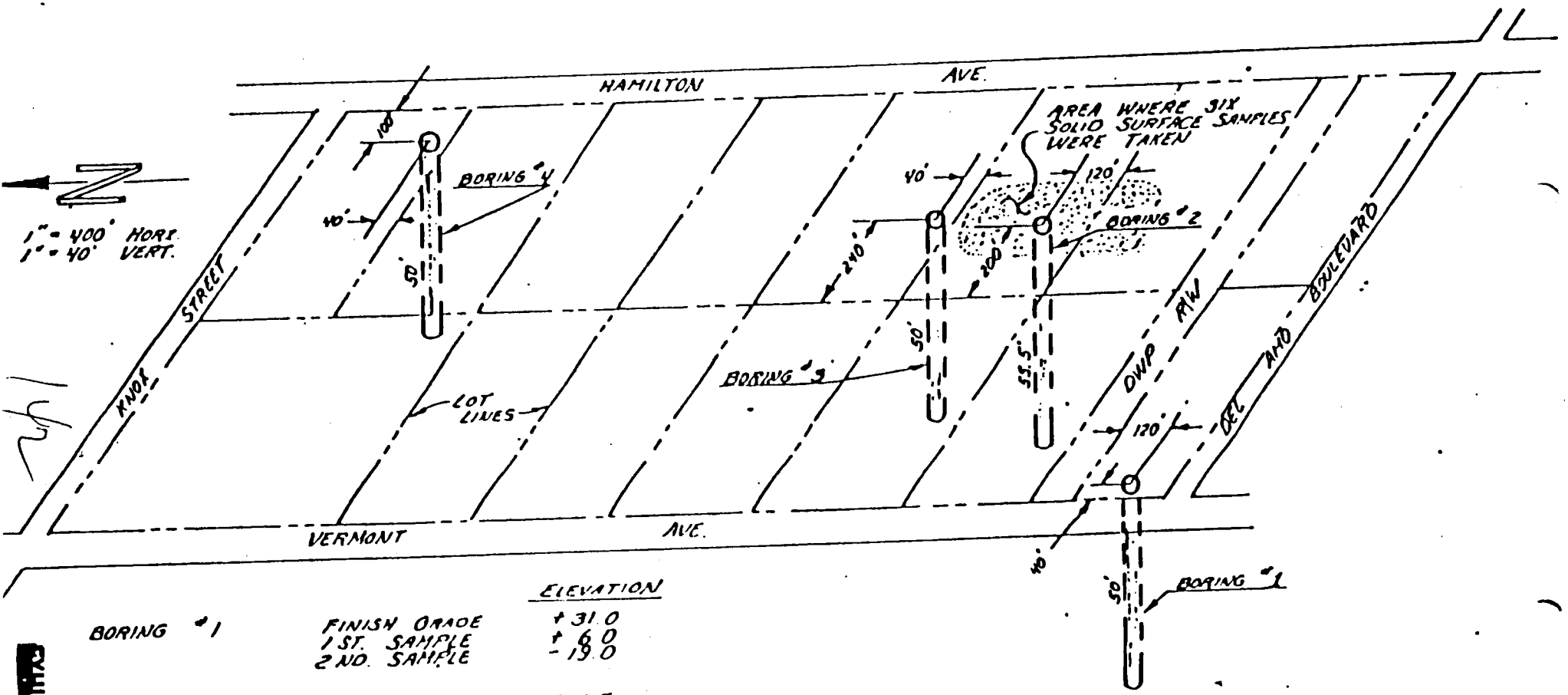


the harbor technology center
for cabot, cabot and forbes

lot plan

hill · pickert architect

LOCATION MAP OF BORING SAMPLES AND SURFACE SAMPLES ANALYZED BY IT ANALYTICAL SERVICES

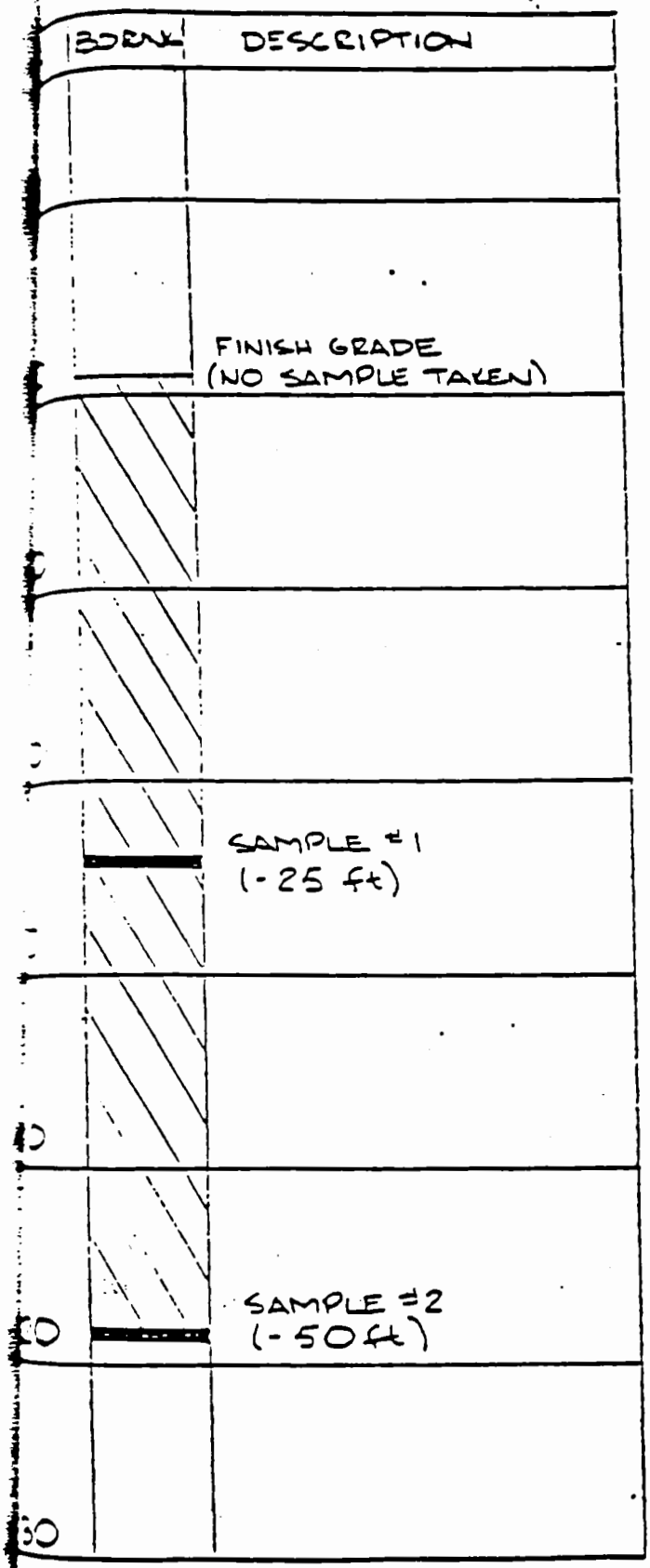


		ELEVATION
BORING #1	FINISH GRADE	+31.0
	1 ST. SAMPLE	+6.0
	2 NO. SAMPLE	-19.0
BORING #2	FINISH GRADE	+27.5
	1 ST. SAMPLE	+17.0
	2 NO. SAMPLE	-3.0
	3 RD. SAMPLE	-28.0
BORING #3	FINISH GRADE	+26.0
	1 ST. SAMPLE	+1.0
	2 NO. SAMPLE	-24.0
BORING #4	FINISH GRADE	+26.5
	1 ST. SAMPLE	+21.5
	2 NO. SAMPLE	+1.5
	3 RD. SAMPLE	-23.5
SURFACE SAMPLES		
SIX (6)	ALL SAMPLES	+

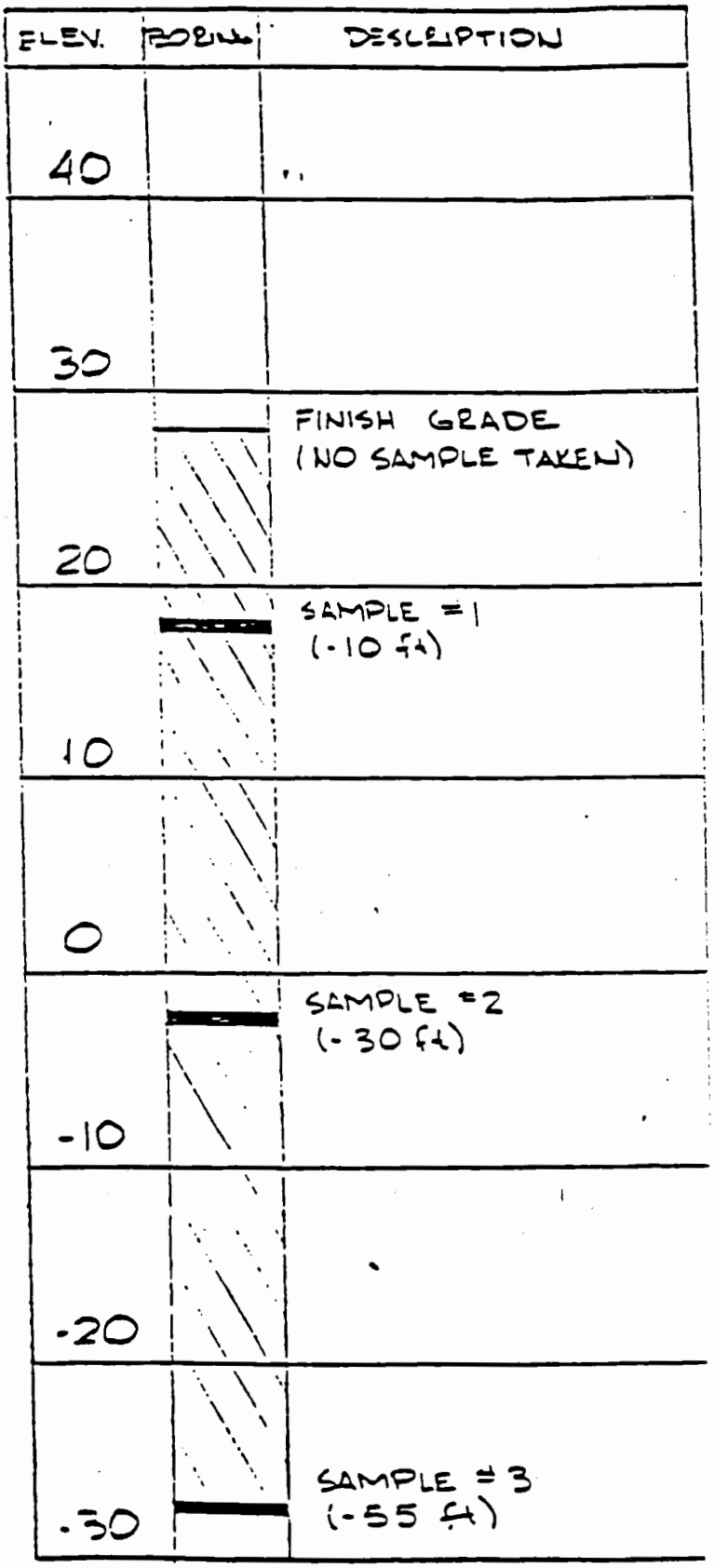
HARBOR TECHNOLOGY CENTER

BORING LOG

BORING NO. 1



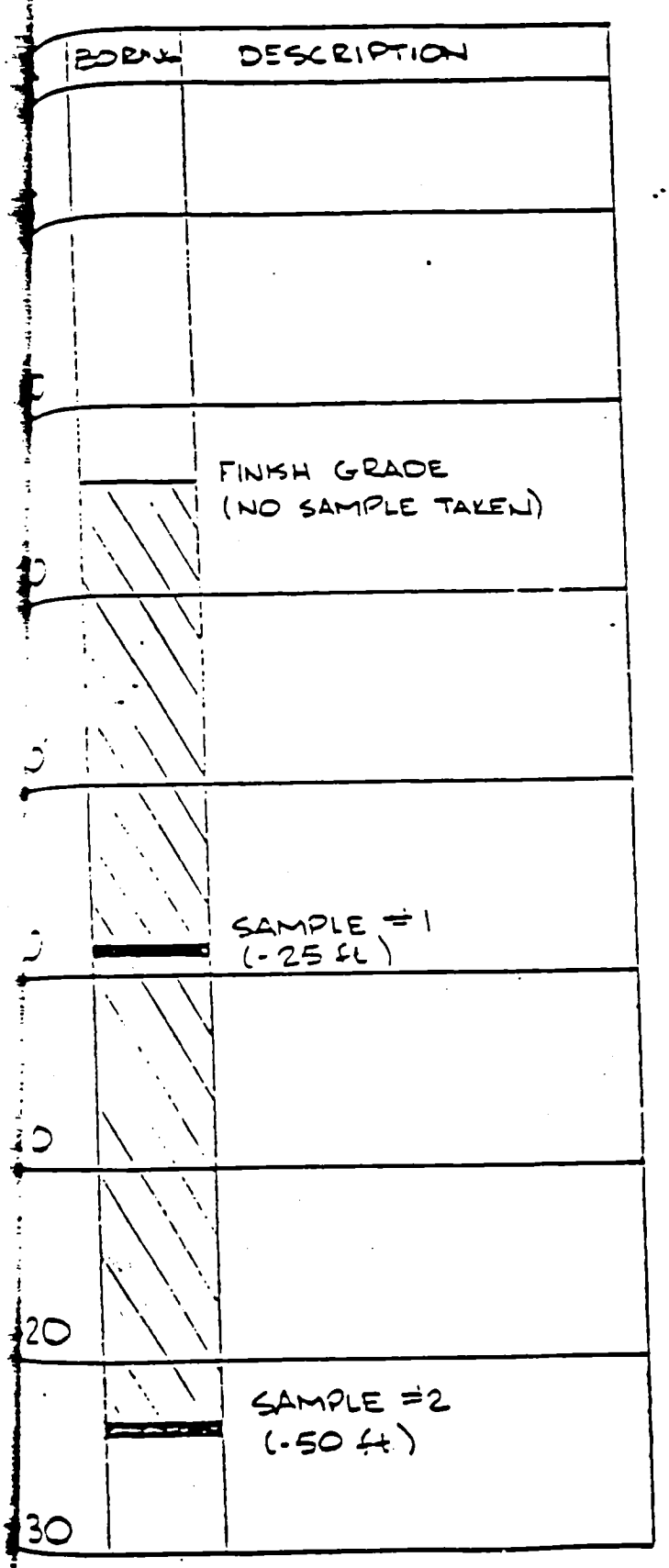
BORING NO. 2



EXHIBIT

BORING LOG

BORING NO. 3.



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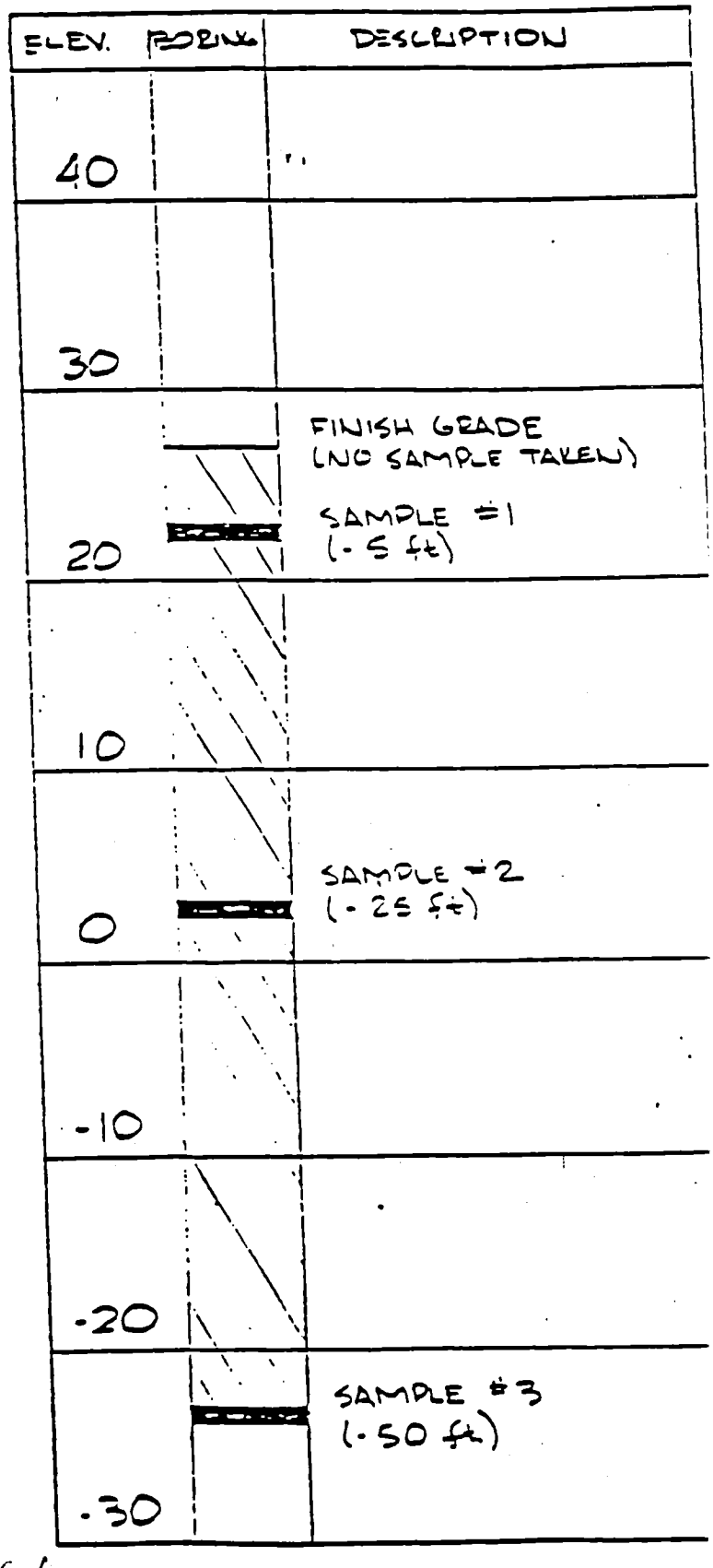

EXHIBIT

CABOT, CABOT & FORBES
911 WILSHIRE BOULEVARD, SUITE 1010, LOS ANGELES, CALIFORNIA 90017

EDWARD J. BALL, JR.

(AREA CODE 213) 626-8171

August 26, 1983

Mr. John A. Hinton, P.E.
Regional Administrator
STATE OF CALIFORNIA
Department of Health Services
107 South Broadway, Room 7128
Los Angeles, California 90012

Dear John:

Attached are the reports that Royce Donkel prepared for CC&F. I think that they are self-explanatory and if you have any questions please feel free to call Royce or myself.

Sincerely,

Edward J. Ball, Jr.

EJB:lmy

Enclosure

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August 25, 1983

Cabot, Cabot & Forbes
911 Wilshire Boulevard
Suite 1010
Los Angeles, California 90017

Attention: Mr. Edward J. Ball, Jr.

Gentlemen:

Following is a summary of my work experience on the site of the Harbor Technology Center, and Pacific Gateway Center.

Shell

1943 - 1947	Chemist
(1947 - 1950	Houston)
1950 - 1952	Sr. Chemist
1952 - 1955	Chief Chemist
1955 - 1962	Sr. Process Engineer Polymers
1962 - 1972	Staff Engineer Environmental

CC&F

1972 - 1975	Assistant Project Engineer

CF

1977 - 1982	Advisor

CC&F

1982 - 1983	Advisor

Yours very truly,

Royce Donkel
B.S. Chemistry
University of Wisconsin 1943

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August 25, 1983

Cabot, Cabot & Forbes
911 Wilshire Boulevard
Suite 1010
Los Angeles, California 90017

Attention: Mr. Edward J. Ball, Jr.

Gentlemen:

The site of Harbor Technology Center was farmland prior to World War II. As supplies of natural rubber from the far east were cut off with the outbreak of the war, it was decided to immediately establish a government owned synthetic rubber industry. On the West Coast, Shell was selected to manufacture butadiene from refinery gases on the Harbor Technology site; DOW to manufacture styrene on the Pacific Gateway site south of Knox Street, and Goodyear and U.S. Rubber to manufacture styrene-butadiene rubber (SBR) on the Pacific Gateway site north of Knox Street.

Construction of the plants began in 1942 and production began in 1943. The butadiene and SBR units were shut down in 1948, as SBR was then deemed uncompetitive with natural rubber. Sytrene production was continued to satisfy the demand for polystyrene, a large volume plastic.

When the Korean War began in 1950, natural rubber producers were in much the same position as OPEC is today, and prices soared. The butadiene and SBR plants were reopened, and SBR then became an economic replacement for natural rubber.

By 1955, the synthetic rubber industry was solidly in the black, and the government decided to dispose of it to private and corporate investors. Shell then purchased the entire West Coast complex for $30 million and operated it until 1972, when its technology had become obsolete. It was then sold to Cabot, Cabot & Forbes for development into an industrial park.

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Butadiene manufacture was similar to the operation of a small oil refinery. LPG hydrocarbons were the feed and product. Byproducts were gaseous or liquid fuels. Chemicals employed were used as solvents in separation processes. Other chemicals were used in water treatment for the boilers and cooling towers of the plant heating and cooling systems. Onsite disposal operations required consisted mainly of wastewater treatment, with oils recovered serving as boiler fuel. Solid wastes, such as catalysts, and slurries, such as water treating sludges, were hauled to an offsite disposal facility of suitable classification.

Yours very truly,

Royce Donkle

August 25, 1983

Cabot, Cabot & Forbes
911 Wilshire Boulevard
Suite 1010
Los Angeles, California 90017

Attention: Mr. Edward J. Ball, Jr.

Gentlemen:

I have reviewed the letter of July 19, 1983 to Peter Blumer from the Department of Health Services regarding the former Shell Chemical Plant site. It is my distinct impression that they have their guns levelled at Lot 61, for a variety of reasons. First, because of its location in a remote area. Second, they note that lot has been re-graded, with (they think) removal of 14 feet of contaminated soil. Third, they are concerned about a fuel oil storage tank that used to be on Lot 61, and which shows up on old aerials.

If indeed the location of the borings noted for the Ken O'Brien report is Lot 61, then there is no doubt of their target.

Two fuel oil tanks, with auxiliary heaters and pumps, and a gas-holder occupied Lot 61 during Shell ownership. I believe that prior to that time Lot 61 was the edge of marshy ground adjacent to the old natural drainage that preceded the present "Torrance lateral" flood control channel.

Yours very truly,

Royce Donkle

Royce Donkle

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CALIFORNIA—HEALTH AND WELFARE AGE
TMENT OF HEALTH SERVICES
BROADWAY, ROOM 7128
LES, CA 90012
3380

GEORGE DEUKMEJIAN, Governor

August 26, 1983

Edward J. Ball, Jr.
CABOT, CABOT & FORBES
911 Wilshire Boulevard, Suite 1010
Los Angeles, CA 90017

Dear Mr. Ball:

PROPERTY BETWEEN VERMONT AND HAMILTON STREETS AND NORTH OF DEL AMO BLVD.

Based on the information currently available, and the results of subsurface investigations conducted by IT Analytical, there is no reason to believe that the subject property is a hazardous waste property.

If however, future subsurface exploration or excavation reveal the presence of hazardous wastes, the Department will require appropriate mitigative measures.

Sincerely,

John A. Hinton, P.E.
Regional Administrator
Southern Region
Permits, Surveillance and
Enforcement Section
Hazardous Waste Management Branch

JAH/gd
cc: Lloyd Batham

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Ex 7

IT CORPORATION

IT ANALYTICAL SERVICES

WEST COAST TECHNICAL SERVICE DIVISION
17605 Fabrica Way • Cerritos, California 90701 • 213-921-9831

CERTIFICATE OF ANALYSIS

TO Andrex
3000 Ocean Park Blvd., Ste. 1004
Santa Monica, CA 90405
Attn: Steve Welsh

DATE REPORTED September 22, 1983
PROJECT CODE 27242/yks
ORDER NUMBER VERBAL/Ed Ball

Five (5) soil samples: 63-A (47.5ft)
63-A (45.5ft)
63-B (49.8ft)
63-B (47ft)
64-C (50ft)

The samples were analyzed by combined gas chromatography-mass spectrometry for volatile, base/neutral and acid extractable pollutants according to EPA approved methods. The results are listed in Tables I & II.

No compounds which designate samples as "hazardous waste" according to either EPA or California criteria were found in these tests. Thus, the soils would not be classified as hazardous waste. The priority pollutant compounds seen are mainly relevant to drinking water pollution. The levels found reflect the former presence of plastics manufacturing and petroleum wastes, We are not aware of any regulations concerning priority pollutants in soil. The other compounds seen (non-priority pollutants) reflect the former presence of rubber manufacture and petroleum wastes. Of these, the isobutylene oligomers are of concern due to their high levels and odor. They are not, however, regulated compounds. The compounds were found in only one of the borings and at a substantial depth; thus, this data would not prevent construction on the site and would be unlikely to impact future development.

7
Welsh
7-31-90

Neil E. Spingarn

Neil E. Spingarn, Ph.D.
Title Staff Chemist
Approved By

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Table I. Priority Pollutant Compounds

Compound Identification	Concentration (milligrams/kilogram) Bore 63A (45.5Ft)	Bore 63A (47.5Ft)	Bore 63B (47Ft)	Bore 63B (49.8Ft)	Bore 64C (50Ft)
Styrene	38	0.08	ND<5	ND<5	39
Xylenes	33	0.05	ND<5	ND<5	30
Ethylbenzene	14	0.02	ND<5	ND<5	11
Toluene	17	0.07	ND<5	ND<5	17
Benzene	1.3	0.01	ND<5	ND<5	1.5
Methyl ethyl ketone	1.6	0.3	ND<5	ND<5	18
Acetone	2	0.2	ND<5	ND<5	9
Other volatile priority pollutants	ND<0.1	0.01	ND<5	ND<5	ND<0.1
Naphthalene	2.8	ND<0.2	0.25	0.37	1.6
Phenanthrene	2.7	ND<0.2	2.2	2.6	1.8
2-Methylnaphthalene	0.67	ND<0.2	0.8	0.9	0.78
Pyrene	0.74	ND<0.2	ND<0.2	0.26	0.49
Anthracene	ND<0.2	ND<0.2	ND<0.2	0.42	ND<0.2
Fluorene	ND<0.2	ND<0.2	ND<0.2	0.62	ND<0.2
Other semivolatile priority pollutants	ND<0.2	ND<0.2	ND<0.2	ND<0.2	ND<0.2

ND - This compound was not detected; the limit of detection for this analysis is less than the amount stated in the table above.

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IT CORPORATION

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Table II. Non-Priority Pollutant Compounds

Compound Identification	Concentration (milligrams/kilogram) Bore 63A (45.5ft)	Bore 63A (47.5ft)	Bore 63B (47ft)	Bore 63B (49.8ft)	Bore 64C (50ft)
Diisobutylene isomers	ND<4	ND<1	4000	6000	ND<4
Triisobutylene isomers	ND<4	ND<1	900	900	20
Tetraisobutylene isomers	ND<1	ND<1	90	90	ND<4
Indene	4	ND<1	ND<50	ND<50	ND<4
Ethyltoluenes	TR<4	ND<1	ND<50	ND<50	10
Methylstyrenes	ND<4	ND<1	ND<50	ND<50	7
Tetrahydro-4,7-methanoindene	20	ND<1	ND<50	ND<50	20
Dimethylstyrenes	ND<4	ND<1	ND<50	ND<50	10
Methylphenanthrenes	10	ND<1	ND<50	ND<50	10
Dimethylphenanthrenes	10	ND<1	ND<50	ND<50	20
Trimethylphenanthrenes	10	ND<1	ND<50	ND<50	4
Terpenes	ND<4	ND<1	ND<50	ND<50	8
Cyclopentadiene	20	ND<0.01	ND<5	ND<5	ND<0.1
Methylcyclopentadiene	5	ND<0.01	ND<5	ND<5	ND<0.1
Ethylcyclohexene	10	ND<0.01	ND<5	ND<5	ND<0.1
Other unidentified hydrocarbons	60	ND<1	200	200	50
Unidentified compounds	40	ND<1	200	400	20
Other semivolatile organics	ND<4	ND<1	ND<50	ND<50	ND<4
Other volatile organics	ND<0.1	ND<0.01	ND<5	ND<5	ND<0.1

ND - This compound was not detected; the limit of detection for this analysis is less than the amount stated in the table above.

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Appendix - Organic Hazardous Wastes

CAM - Threshold Level Concentrations (ug/g)

Compound	Soluble	Total	Extreme hazard	EPA: EP Toxicity (mg/L)
Aldrin	0.14	1.4	100	
Chlordane	0.3	3	300	
DDT, DDE, DDD	0.1	1		
2,4-D	10	100		10
Dieldrin	0.1	1	100	
Dioxin (TCDD)	0.003	0.03	3	
Endrin	0.02	0.2	20	0.02
Heptachlor	0.3	3	10	
Kepone	0.5	5	20	
Lindane	0.4	4	400	0.4
Mirex	0.5	5	20	
Methoxychlor	10	100		10
Pentachlorophenol	1	10	1000	
PBBs	7	70	500	
PCBs	7	70	500	
PCTs	7	70	500	
Toxaphene	0.5	5	500	0.5
Trichloroethylene	0.5	5	500	
2,4,5-T	1	10		1

If the following compounds are present >0.1% (w/w) both CAM and CFR define them as extreme hazards: 2-acetylaminofluorene, acrylonitrile, 4-aminodipheyl, 4-nitrobiphenyl, benzidine, bis(chloromethyl)ether, chloromethyl methyl ether, 3,3'-dichlorobenzidine, 4-dimethylaminobenzene, ethyleneimine, MOCA, α-naphthylamine, β-naphthylamine, N-nitrosodimethylamine, β-propiolactone, and vinyl chloride.

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Cabot, Cabot & Forbes

SOUTH BAY CENTER

4 - Additional Soil Borings Lots 63 & 64

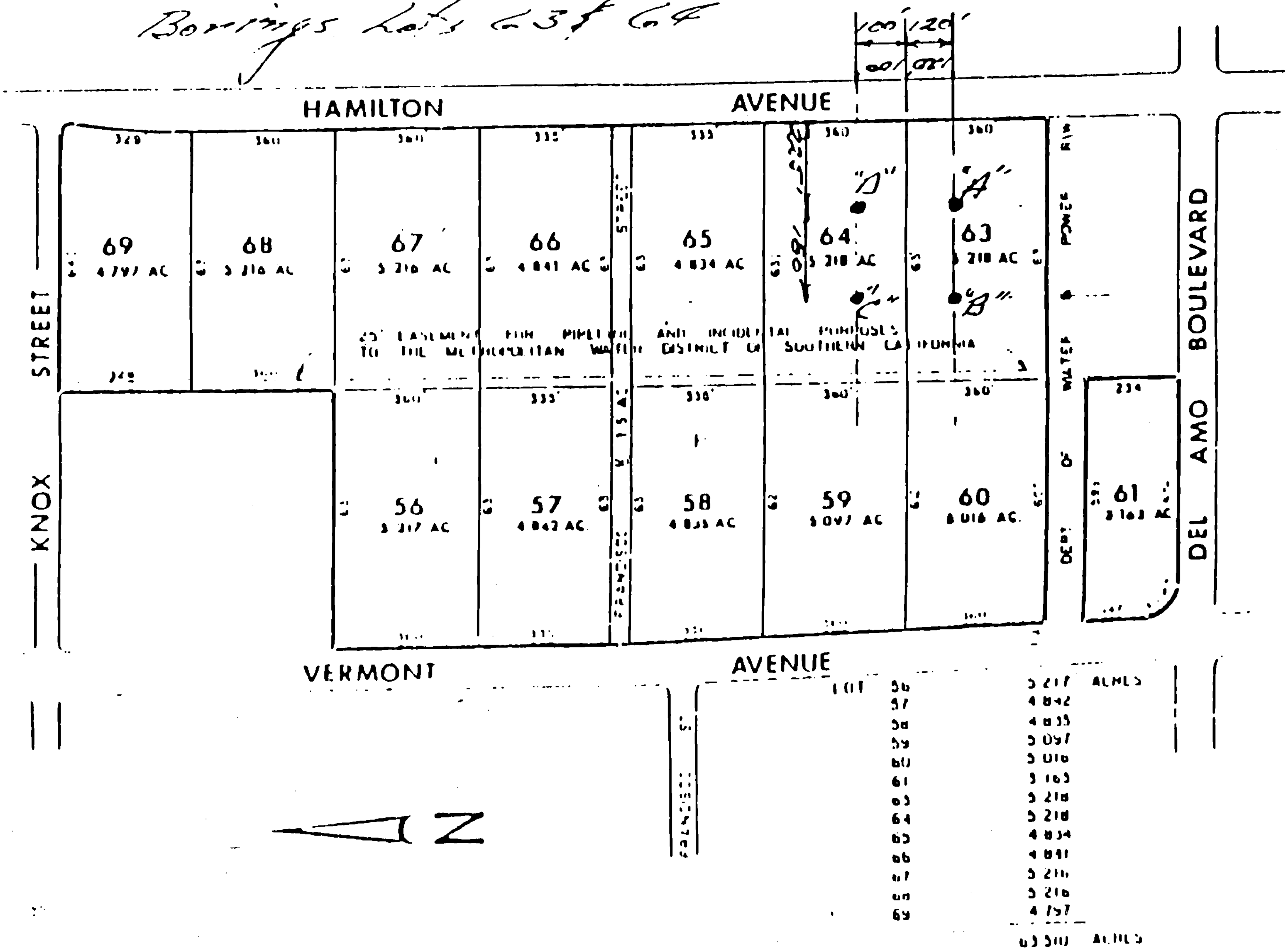

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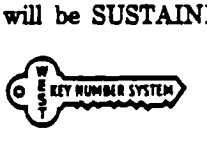
Exhibit 8

Co., which were abandoned by the estate, in return for the Haddixes' release of Mrs. Oberlies, and other consideration.

We assume that the trustee will seek to sell the home pursuant to § 363(h) and to otherwise administer the $27,000 cash in escrow for the benefit of all joint creditors. If these purported settlement agreements are valid and if the joint creditors abide by the terms thereof and release Mrs. Oberlies of her liability to them, then there will be no joint creditors to partake in the proceeds of the sale of the joint assets. If that proves true, of course, there will be no purpose in selling the home or disbursing the $27,000 to anyone other than the debtor and his wife.

[4] However, at the present time the record is insufficient to adjudge that waivers of these creditors' joint claims have been effected. Although a creditor may withdraw a claim as of right, it must do so in writing by filing a notice of withdrawal. Bankruptcy Rule 3006. None of the joint creditors has done that. Furthermore, a proof of claim may be amended as a matter of course at any time before an objection to its allowance is served. F.R.Civ.P. 15(a); 2 *Collier Bankruptcy Manual*, ¶ 502.02 (3rd ed. 1988), and by leave, freely given, thereafter, *Szatkowski v. Meade Tool & Die Co.*, 164 F.2d 228 (6th Cir.1947); *In re Pyramid Bldg. Co.*, 87 B.R. 38 (Bankr.N.D.Ohio 1988). None of the creditors has sought to amend its proof of claim to clearly and unequivocally assert a waiver of its joint claim. The trustee is therefore fully justified in assuming that these joint creditors still assert their joint claims and wish to accept their *pro rata* shares of the proceeds of the sale of the joint assets.

Accordingly, the trustee's objection to the debtor's claim of exemption as to the joint assets will be SUSTAINED.[7]



7. The trustee should get in contact with the joint claimants and determine whether they do intend to waive their right to participate in the "joint assets estate". If one or more declines to so waive, he should proceed to administer these assets in the appropriate manner.

In re STERLING STEEL TREATING, INC., Debtor.

Fred J. DERY, Trustee, Plaintiff,

v.

John L. BECKER II and Eileen Becker, Defendants.

Bankruptcy No. 86-02999-R.
Adv. No. 87-0831-R.

United States Bankruptcy Court, E.D. Michigan.

Jan. 13, 1989.

Trustee for corporate business' Chapter 7 bankruptcy estate brought adversary proceeding to recover balance of purchase price from purchasers, after purchasers withheld part of the purchase price as compensation for cost of removing hazardous wastes found in trailer located on property purchased. On cross motions for summary judgment, the Bankruptcy Court, Steven W. Rhodes, J., held that: (1) purchasers had reason to know that property was contaminated when they purchased it, and were thus entitled to protection of third-party defense from liability under the Comprehensive Environmental Response, Compensation, and Liability Act; (2) purchasers' status as responsible parties under CERCLA did not preclude purchasers from maintaining private action to recover response costs; and (3) cost of cleaning up hazardous wastes found in trailer should be borne equally by bankruptcy estate of corporate business and purchasers.

Ordered accordingly.

1. Health and Environment ⇐25.5(5.5)

Real property that trailer in which hazardous wastes were placed was located on was "facility," for purposes of the Comprehensive Environmental Response, Compen-

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sation, and Liability Act, as the real property was a site or area where a hazardous substance had been deposited, stored, disposed of, or placed. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101(9), as amended, 42 U.S.C.A. § 9601(9).

See publication Words and Phrases for other judicial constructions and definitions.

2. Health and Environment ⇐25.5(5.5)

Trailer in which hazardous wastes were placed was "facility," for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, as site or area where hazardous substance had been deposited, stored, disposed of, or placed. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101(9), as amended, 42 U.S.C.A. § 9601(9).

3. Health and Environment ⇐25.5(5.5)

Corporation that owned and operated property at time hazardous wastes were placed in trailer located on property and current owners of real property and trailer located thereon were all potentially responsible parties under the Comprehensive Environmental Response, Compensation, and Liability Act. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

4. Health and Environment ⇐25.5(5.5)

Chapter 7 bankruptcy estate was potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act with respect to hazardous wastes in trailer located on real property, where corporate debtor had operated business while case was in Chapter 11 and owned trailer housing hazardous waste, and both trailer and waste were property of the estate. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

5. Health and Environment ⇐25.5(5.5)

Landowner who innocently or involuntarily acquired contaminated property may invoke third-party defense to liability under the Comprehensive Environmental Response, Compensation, and Liability Act if the landowner establishes he inquired into prior ownership and uses of property, that inquiry did not reveal that hazardous wastes had been disposed of on the site, and he therefore had no reason to know that the property was contaminated. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(35)(A), 107(b)(3), as amended, 42 U.S.C.A. §§ 9601(35)(A), 9607(b)(3).

6. Health and Environment ⇐25.5(5.5)

Although corporate business was solely responsible for placement of hazardous wastes in trailer and property purchasers exercised due care with respect to the waste once it was discovered, property owners could not assert third-party defense to liability under the Comprehensive Environmental Response, Compensation, and Liability Act, where purchasers had reason to know that the property on which trailer containing wastes was located was contaminated when they purchased property; purchasers had had business dealings with corporate business and were aware of industrial uses of property, and property was open for inspection before sale. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(35)(A), 107(b)(3), as amended, 42 U.S.C.A. §§ 9601(35)(A), 9607(b)(3).

7. Health and Environment ⇐25.15(4)

Purchasers of property on which trailer containing hazardous wastes was located would not be precluded from maintaining private action for recovery of costs under the Comprehensive Environmental Response, Compensation, and Liability Act based on purchasers' status as responsible parties under CERCLA, although purchasers had reason to know property was contaminated when they purchased it, and thus could not assert third-party defense. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101–312, as amended, 42 U.S.C.A. §§ 9601–9661.

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8. Health and Environment ⇐25.5(5.5)

Doctrine of caveat emptor and "as-is, where-is" terms of sale of property on which trailer containing hazardous wastes was located did not preclude imposing liability on vendor bankruptcy estate under the Comprehensive Environmental Response, Compensation, and Liability Act for costs incurred by property purchasers in cleanup. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

9. Health and Environment ⇐25.5(5.5)

Purchasers of property on which trailer containing hazardous wastes was located should bear at least some of the responsibility for cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act; purchasers bore burden of any defect in property that they purchased and thus had responsibility to undertake thorough inspection under doctrine of caveat emptor, "as-is" condition of sale provided notice to purchasers of their potential responsibilities in that regard, and purchasers were sufficiently familiar with operations conducted by corporate business and property that they should have suspected hazardous wastes might have been present and inspected property as result of those suspicions. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

10. Health and Environment ⇐25.5(5.5)

Corporate business' bankruptcy estate should bear some of the responsibility for cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act, although estate had sold property on which trailer containing hazardous wastes was located; bankruptcy trustee failed to disclose to perspective purchasers at sale that there were hazardous substances in trailer, and although trustee claimed he did not have actual notice of trailer's contents, he should have had that knowledge. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

11. Health and Environment ⇐25.5(5.5)

Cost of cleaning up hazardous wastes found in trailer should be borne equally by vendor bankruptcy estate of corporate business and by purchasers that had bought property on which trailer containing hazardous waste was located from bankruptcy estate, under the Comprehensive Environmental Response, Compensation, and Liability Act. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), as amended, 42 U.S.C.A. § 9607(a).

Donald Hutchinson, Detroit, Mich., for plaintiff.

Paul Steinberg, Southfield, Mich., for defendants.

AMENDED MEMORANDUM OPINION

STEVEN W. RHODES, Bankruptcy Judge.

This adversary proceeding requires the Court to determine the extent of the parties' respective responsibilities for the cost of removing hazardous wastes on property purchased by the defendants from the bankruptcy estate.

I. *Facts*

The debtor, Sterling Steel Treating, Inc. (Sterling Steel), was in the business of heat treating steel. On January 6, 1986, Sterling Steel filed a petition under Chapter 11 of the Bankruptcy Code. On January 22, 1987, the case was converted to Chapter 7. Fred J. Dery, the plaintiff in this adversary proceeding, was appointed trustee.

On March 24, 1987, Dery held a public auction of the debtor's real and personal property. All of the bidders at the auction, including the Beckers, were allowed to inspect the property fully. Included in the property to be sold was the site of the debtor's heat treating operations at 12200 Greenfield, Detroit, Michigan. The property was offered and sold in an "as-is" condition.

On the Greenfield property there was a trailer containing hazardous wastes. The

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bidders were neither invited to nor discouraged from inspecting this trailer. The trustee was unaware of these hazardous wastes and thus did not advise the bidders of them. Apparently, no one showed any interest in the trailer and there was no discussion of it.

The Beckers' offer of $186,300 was accepted, and on March 30, 1987, the Court confirmed the sale to them.

Sometime later, but before the closing on the sale, the Beckers discovered the hazardous waste [1] in the trailer, and took immediate steps to dispose of the waste with the approval of the Environmental Protection Agency and in compliance with the EPA's National Contingency Plan.

At the closing on the sale, the Beckers paid the trustee $161,300, and withheld $25,000 as compensation for the cost of removing the wastes found in the trailer. The actual amount expended by the Beckers for the cleanup was $8,500.

On October 8, 1987, the trustee filed an adversary complaint to recover the balance of the purchase price. The Beckers filed an answer with affirmative defenses, alleging that the waste materials in the trailer constituted a material and substantial defect in the condition of the property of which the trustee and auctioneer should have been aware. The Beckers also alleged that the wastes in the trailer were not discoverable upon reasonable inspection by the bidders and that their decision to bid, or the amount of their bid, would have been materially affected if they had known about the wastes.

Both parties have filed motions for summary judgment. The trustee seeks a judgment compelling the Beckers to pay the $25,000 withheld from the purchase price or, if the estate is held liable for the cleanup costs, the difference between the amount withheld and the Beckers' actual cleanup expenditure. The Beckers seek a judgment that the estate is responsible for the cleanup costs.

1. The parties have stipulated that the substances found in the trailer after the confirmation of the sale are hazardous wastes within the definition in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C.A. §§ 9601-9661 (West 1983 & Supp.1988).

II. *Liability Under CERCLA*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.A. §§ 9601-9661 (West 1983 & Supp.1988), establishes a comprehensive response and financing program to abate and control problems posed by abandoned or inactive hazardous waste sites. CERCLA enables private parties to voluntarily clean up hazardous waste sites and then recover their cleanup costs from other potentially responsible parties. 42 U.S.C. § 9607(a)(4)(B). The Beckers claim that under that statute they properly withheld a portion of the purchase price as reimbursement for their cleanup costs.

Section 107, 42 U.S.C.A. § 9607(a) (West Supp.1988), is the liability section of CERCLA. It provides:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—
>
> (1) the owner and operator of a vessel or a facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of

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response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

Pursuant to 42 U.S.C.A. § 9607(a)(1) and (2), the potentially responsible parties include, "the owner and operator of a ... facility [and] ... any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of...."

[1-3] Sterling Steel owned and operated the property at 12200 Greenfield at the time the hazardous wastes were placed in the trailer. The Beckers are the current owners of the facility.[2] Therefore, both Sterling Steel and the Beckers are potentially responsible parties under CERCLA.

[4] The bankruptcy estate is also a potentially responsible party. *In re T.P. Long Chemical Co.*, 45 B.R. 278 (Bankr.N.D. Ohio 1985). In that case, the court found that the EPA's claim for cleanup costs was a claim for an administrative expense against the estate. *Id.* at 283. The court reasoned that because the debtor, as debtor-in-possession, had operated the business and owned the hazardous waste while the case was in Chapter 11, and in light of the broad construction given to CERCLA, the estate was a potentially responsible party. *Id.* at 284. *See also In re Hemingway Transport, Inc.*, 73 B.R. 494, 499 (Bankr.D.Mass.1987).

The facts in this case are similar to those in *T.P. Long Chemical*. Sterling Steel operated the business while the case was in Chapter 11 and owned the trailer housing the hazardous waste. Both the trailer and the waste were property of the estate. Therefore, pursuant to these authorities, the Court concludes that the Chapter 7 estate is also a potentially responsible party.[3]

III. *The Third Party Defense Under CERCLA*

CERCLA imposes strict liability upon responsible parties, subject only to the defenses provided in 42 U.S.C.A. § 9607(b)

2. Section 101 of CERCLA defines "facility" as: (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.... 42 U.S.C.A. § 9601(9) (West 1983). Since the Greenfield property is a "site or area where a hazardous substance has been deposited, stored, disposed of, or placed ...," it is a facility for purposes of CERCLA. The trailer in which the hazardous wastes were found also is a facility within this definition. *See United States v. Bliss*, 667 F.Supp. 1298, 1305 (E.D.Mo.1987).

3. The Court notes that the trustee does not argue otherwise.

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(West 1983). *In re T.P. Long Chemical, Inc.*, 45 B.R. 278, 282 (Bankr.N.D. Ohio 1985). Section 107(b) states:

> There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—
>
> (1) an act of God;
>
> (2) an act of war;
>
> (3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
>
> (4) any combination of the foregoing paragraphs.

42 U.S.C.A. § 9607(b) (West 1983).

[5] The defense at issue in this case is the "third party" defense of subsection (b)(3). This defense exonerates from liability any party who can prove that the hazardous condition was due to the act of a third party with whom the defendant had no agency or contractual connection.[4] A landowner who innocently or involuntarily acquired contaminated property may invoke the third party defense if he establishes that he inquired into the previous ownership and uses of the property, that the inquiry did not reveal that hazardous wastes had been disposed of on the site and that he therefore had no reason to know that the property was contaminated. 42 U.S.C.A. § 9601(35)(A) (West Supp.1988).

When determining the adequacy of the inquiry made by the party invoking the third party defense, a court is required to—

> take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presense of contamination at the property, and the ability to detect such contamination by appropriate inspection.

42 U.S.C.A. § 9601(35)(B) (West Supp. 1988).

A party invoking the third party defense must also show by a preponderance of the evidence that he exercised "due care with regard to the hazardous substance" and that "he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions...." 42 U.S.C.A. § 9607(b)(3) (West 1983).

[6] The Beckers contend that they are exonerated from liability for cleanup costs at the Greenfield site because they meet the requirements of the third party defense.[5]

It is true that Sterling Steel was solely responsible for placement of the hazardous wastes in the trailer and that the Beckers exercised due care with respect to the waste once it was discovered. However, the Court must find that when the Beckers purchased the property, they did have reason to know that the property was contaminated.

4. The term "contractual relationship" excludes land contracts and other methods of transferring title or possession of property if the property was acquired after the hazardous substances were dumped there and the acquiring party can prove that he had no reason to know of the contamination. 42 U.S.C.A. § 9601(35)(A) (West Supp.1988).

5. The trustee does not assert this defense on behalf of the estate.

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The Beckers had business dealings with Sterling Steel before purchasing the Greenfield property. Therefore, they were aware of the industrial uses of the property. The property was open for inspection before the sale, but the Beckers apparently made no attempt to inspect the trailer containing the hazardous waste. Accordingly, the Court concludes that the inquiry made by the Beckers prior to purchasing the Greenfield property was insufficient, and their claim that they had no reason to know that the property was contaminated with hazardous substances must be rejected. Thus, the Beckers do not satisfy one of the elements of the third party defense and are not entitled to its protection.

IV. *The Beckers' Standing Under CERCLA*

[7] The trustee argues that only parties without CERCLA liability can maintain a private cause of action against potentially responsible parties, and because the Beckers are themselves liable under CERCLA, they do not have standing to claim cleanup costs against the estate. However, the trustee has not cited any case law in support of this argument and this Court has been unable to find any that is persuasive.

Some courts have applied the somewhat analogous equitable defense of unclean hands to private response cost recovery actions under CERCLA. *Mardan Corp. v. C.G.C. Music, Ltd.*, 600 F.Supp. 1049, 1058 (D.Ariz.1984); *D'Imperio v. United States*, 575 F.Supp. 248, 253 (D.N.J.1983).

Other courts have found that the unclean hands defense does not apply. In *United States v. Conservation Chemical Co.*, the court stated:

> To give effect to the legislative intent [of CERCLA], the 'any other person' language in 42 U.S.C. § 9607(a)(1)–(4)(B) must be construed to refer to persons other than federal or state governments, and not to persons other than those made responsible under CERCLA (citations omitted). Application of the unclean hands defense in this context would turn Congressional intent on its head.

628 F.Supp. 391, 404–05 (W.D.Mo.1985). *See also Chemical Waste Management, Inc. v. Armstrong World Industries*, 669 F.Supp. 1285, 1292 (E.D.Pa.1987); *Pinole Point Properties, Inc. v. Bethlehem Steel Corp.*, 596 F.Supp. 283, 291 (N.D.Cal.1984); *City of Philadelphia v. Stepan Chemical Co.*, 544 F.Supp. 1135, 1142 (E.D.Pa.1982).

This Court is persuaded by the reasoning of those courts that reject the unclean hands defense. Accordingly, this Court rejects the trustee's argument that because the Beckers are themselves responsible parties under CERCLA and therefore arguably have "unclean hands," they are not entitled to maintain this private cost recovery action.

V. *The Trustee's Caveat Emptor Defense*

[8] The trustee also argues that the doctrine of *caveat emptor* and the "as-is, where-is" terms of the sale are defenses to the estate's liability for cleanup costs. He contends that this condition of the sale "specifically excluded any representations or warranties concerning the condition of the premises or their fitness for any particular use." Joint Brief at 6.

A similar warranty disclaimer was discussed in *Mardan Corp. v. C.G.C. Music, Ltd.*, 600 F.Supp. 1049 (D.Ariz.1984). The court in that case found that such a disclaimer "is effective to preclude only causes of action which are based upon breach of warranty theory." *Id.* at 1055. The plaintiff's suit in *Mardan* was based upon CERCLA, not upon a breach of warranty theory, and the court found that the warranty disclaimer did not defeat Mardan's recovery of CERCLA response costs. *Id. See also In re Hemingway Transport, Inc.*, 73 B.R. 494, 506 (Bankr.D.Mass.1987).

The *caveat emptor* defense was discussed in *Smith Land & Improvement Corp. v. Celotex Corporation*, 851 F.2d 86, 90 (3rd Cir.1988), "Doctrines such as caveat emptor and 'clean hands,' which in some cases could bar relief regardless of the degree of culpability of the parties, do not comport with congressional objectives." As a result, the court concluded "that under CERCLA the doctrine of caveat emptor is not a defense to liability for contribution but may only be considered in mitigation of

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amount due." *Id. See also Sunnen Products Co. v. Chemtech Industries, Inc.*, 658 F.Supp. 276, 278 n. 3 (E.D.Mo.1987).

The Beckers have withheld a portion of the purchase price as compensation for expenses incurred in cleaning up the hazardous wastes in the trailer; they have not made any breach of warranty claim. Accordingly, the fact that they purchased the property "as-is, where-is" has no impact on their claim that their retention of a portion of the purchase price is justified under CERCLA. The Court concludes that the trustee's claim of *caveat emptor* is not a defense to the estate's liability for the Beckers' response costs.

VI. *Contribution Under CERCLA*

CERCLA provides for contribution as follows:

> Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 or section 9607 of this title.

42 U.S.C.A. § 9613(f)(1) (West Supp.1988). This section "expressly conditions the amount of contribution on the application of equitable considerations." *Smith Land & Improvement Corp.*, 851 F.2d at 90.

[9] Two equitable considerations suggest that the Beckers should bear at least some of the responsibility for the cleanup costs. First, although neither the doctrine of *caveat emptor* nor the "as-is" condition of the sale are defenses under CERCLA, they are equitable considerations in allocating response costs among responsible parties. Pursuant to the doctrine of *caveat emptor*, the Beckers bear the burden of any defect in the property that they purchased and thus had the responsibility to undertake a thorough inspection. *Restatement (Second) of Torts* § 352 (1965). The "as-is" condition of the sale provided that much more notice to the Beckers of their potential responsibilities in this regard.

Second, the Beckers were sufficiently familiar with the operations conducted by Sterling Steel at the Greenfield property that they should have suspected that hazardous wastes may have been present, and they should have inspected the property as a result of those suspicions. Therefore, the Court concludes that the Beckers should bear some of the responsibility for the response costs.

[10] On the other hand, there is one major equitable consideration suggesting that the estate should bear some of this responsibility. In the Court's view, it is significant that the trustee failed to disclose to the prospective purchasers at the sale that there were hazardous substances in the trailer. Although the trustee claims that he did not have actual knowledge of the contents of the trailer, he certainly should have had that knowledge, because he was responsible for selling the debtor's assets and should have known what he was selling.

[11] After considering these equitable factors, the Court concludes that the cost of cleaning up the hazardous wastes found in the trailer should be borne equally by the estate and the Beckers.

The parties shall submit an order reflecting the Court's decision.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ Type or Print Name

_____ Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 12100 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025

On Dec. 14, 19 90, I served the foregoing document described as DEFENDANT SHELL OIL COMPANY'S MEMORANDUM IN OPPOSITION TO HAMILTON DUTCH INVESTORS' MOTION FOR SUMMARY JUDGMENT on the parties in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

AUGUSTINI, WHEELER & DORMAN
523 West Sixth Street
Suite 330
Los Angeles, CA 90014

☒ BY MAIL

☐ *I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows : I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on December 14, 19 90 at Los Angeles, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

JEANNETTE M. HERRERA
Type or Print Name

_____
Signature

STUART'S EXBROOK TIMESAVER (REVISED 5/1/88)
NEW DISCOVERY LAW 2030 AND 2031 CCP
(May be used in California State or Federal Courts)

*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

File Pleadings
6270.0

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAMILTON DUTCH INVESTORS, a California General partnership, Plaintiff, v. SHELL OIL COMPANY, a corporation, SHELL PIPELINE CORP. and DOES 1 through 50, Defendants.	CASE NO.89 3738 WMB DEFENDANTS' SHELL OIL COMPANY AND SHELL PIPE LINE CORP.'S MEMORANDUM RE: RECOVERY OF RESPONSE COSTS ON PLAINTIFF'S CERCLA CLAIM

Defendants Shell Oil Company and Shell Pipe Line Corporation (hereinafter "Shell") file this memorandum addressing the limited ability of Hamilton Dutch Investors (hereinafter occasionally referred to as "HDI") to recover only those response costs necessary to remedy or to remove a threat to public health. Hamilton Dutch Investors cannot prove by a preponderance of the evidence that the hazardous substances found in the groundwater and soil pose a sufficient threat to public health to justify responsive actions, and therefore, HDI should recover nothing on its CERCLA cause of action.

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BRIEF STATEMENT OF THE FACTS

1. Between 1942 and on or about December 15, 1972, Shell owned or operated certain units of the Shell Torrance Chemical Plant on an approximately 277 acre site generally consisting of all or portions of Lots 12 through 48, inclusive and Lots 54 through 69, inclusive of Tract 4671 (the "Plant Site"). Lot 62 (the Hamilton Dutch Property) was a portion of the Plant Site. Agreement to Arbitrate ¶3.a.(1)(b)i.

2. The contamination of Lot 62 was caused by leaks or spills of Hazardous Substances which occurred while Shell owned or operated the Plant Site. Agreement to Arbitrate ¶3.a.(1)(b)ii.

3. During the period commencing prior to December 15, 1972 (during the period that Shell either operated or owned the Plant Site), and continuing to the present, the Hazardous Substances have continued to enter and migrate into, onto and under Lot 62 in and through the ground water of Lot 62 and into the surrounding soil; the entry and migration of Hazardous Substances from the portion of Lot 62 subject to Shell's pipeline easement into, under and within the remainder of Lot 62 has continued; and the contaminated area of Lot 62 has continued to expand by such migration. Agreement to Arbitrate ¶3.a.(1)(b)iii.

4. On or about December 15, 1972, Shell sold and conveyed the Property to one of Hamilton Dutch Investors's predecessors in title pursuant to a Corporation Grant Deed. Shell reserved to itself an easement affecting a 25-foot strip on the Northern boundary of the Property for pipeline purposes. Second Amended Complaint ¶ 14.

5. On or about February 26, 1987, Plaintiff purchased the property. Second Amended Complaint ¶11. Hamilton Dutch Investors purchased the property "as is" for $5,170,000.

6. In or about August 1988, Plaintiff discovered that the Property was contaminated by Toxic Substances, including benzene. Second Amended Complaint ¶19.

7. For purposes of this arbitration only, Shell does not deny or contest its liability, as distinguished from damages due, to HDI under CERCLA. The only issue to be determined in connection with HDI's CERCLA claim is the amount, if any, of Damages HDI is entitled to recover under CERCLA. Agreement to Arbitrate ¶3.a.(1)(a).

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ARGUMENT

A. CERCLA LIMITS RESPONSE COSTS TO THOSE NECESSARILY INCURRED TO MONITOR, ASSESS, AND EVALUATE A RELEASE OF HAZARDOUS SUBSTANCES NECESSARY TO PREVENT DAMAGE TO THE PUBLIC HEALTH

8. In Cadillac Fairview/California v. Dow Chemical Co. 840 F.2d 691, 695 (9th Cir. 1988) the court summarized the scope of recoverable damages under CERCLA:

> * * * Section 107(a)(2)(B) allows recovery of "costs of response," which includes costs incurred "to monitor, assess, and evaluate the release or threat of release of hazardous substances," and costs of actions "necessary to prevent ... damage to the public health ... [including] security fencing or other measures to

limit access." See CERCLA §101(23), 42 U.S.C. § 9601(23).

9. In Pease & Curren Refining, Inc. v. Spectrolab, Inc. 744 F.Supp. 945 (C.D.Cal. 1990) Pease & Curren received (mislabeled) hazardous waste from Spectrolab. After the material unexpectedly exploded and killed one of its employees, the "Orange County Health Care Agency * * * ordered Pease & Curren to retain a company to remove * * * all of the remaining waste received from Spectrolab. Pease & Curren has incurred expenses exceeding $39,000 for this removal." Id. at 946.

10. Pease & Curren filed a complaint against Spectrolab for inter alia recovery of response costs pursuant to CERCLA. In its complaint, Pease & Curren claimed a right to attorney fees under Section 107(a). Spectrolab moved to dismiss that part of the complaint. The court denied the motion to dismiss the prayer for attorney fees and stated:

> * * * In ascertaining the plain meaning of "enforcement activities," this court concludes that Congress intended for "enforcement activities" to include attorney's fees expended to induce a responsible party to comply with the remedial actions mandated by CERCLA.
> * * *
>
> Furthermore, this holding is consistent with the legislative purposes of CERCLA. CERCLA was enacted by Congress as a response to "the threat to public health posed by the widespread use and disposal of hazardous substances." [citation] "CERCLA is essentially a remedial statute designed by Congress to protect and

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preserve public health and the environment .... * * *." [citations] "[CERCLA's] purpose was to ensure the prompt and effective clean up of waste disposal sites * * *." [citation] Id. at 951.

11. The court held that Pease & Curren's claim for attorney's fees was consistent with CERCLA's provisions, but that recovery is neither assured nor open ended. The court stated:

> * * * Allowing Pease & Curren to claim attorney's fees under CERCLA does not automatically allow Pease & Curren to recover its entire expenditure on attorney's fees, including those dollars spent on pursuing other claims. In the event that Pease & Current does succeed in its CERCLA claim, the amount of attorney's fees that Pease & Curren might be awarded would be an issue to be determined on an allocation basis at a later time. Id. at 952.

12. In Mid Valley Bank v. North Valley Bank 91 Daily Journal D.A.R. 6620 (E.D.Cal.1991); 1991 U.S. Dist. LEXIS 6882, defendants filed their motion for summary judgment based inter alia upon the contention that "plaintiff cannot demonstrate that the clean up actions were consistent with the national contingency plan ("NCP")." Id. at 6621. The court held that the question of whether a sufficient threat to public health existed so as to justify responsive actions was question of fact (precluding summary judgment". The court adopted the test for recovery of response costs set forth in Amoco Oil Company v. Borden, Inc. 889 F.2d 664 (5th Cir. 1989) and stated:

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> * * * [the] **Amoco** court's reading of the causation language * * * focuses on whether as a matter of fact the release was of a sufficient character as to justify any response. Given the statute's purpose which was to "ensure the prompt and effective cleanup of waste disposal sites * * *" **Mardan Corp. v. C.G.C. Music, Ltd.**, 804 F.2d 1454, 1455 (9th Cir. 1986), I cannot find fault with the **Amoco** court's reading that the causation element should "rest upon a factual inquiry into the circumstances of a case and should focus on whether the particular hazard justified any response actions." **Amoco Oil**, 889 F.2d at 670. * * * The factual dispute concerning whether a sufficient threat to public health was presented so as to justify responsive actions precludes summary judgment. Mid Valley Bank v. North Valley Bank 91 Daily Journal D.A.R. 6620, 6624 (E.D.Cal.1991).

13. In the case at bar, there is no evidence that the contamination, migrating in and through the groundwater presents any threat to the public health. The EMCON report prepared for (and ironically by) HDI's counsel before instigation of the litigation stated that the contamination was localized to the Northwest corner of the property and posed no threat at all! That report identified the responsible party, as Shell. The contents of that report were given such great weight that no other responsible party (with the meaning of CERCLA) was identified other than Shell. Thus, before instigation of the litigation, HDI had determined: (1) that no threat to the

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environment or the public health existed; (2) that no remedial or responsive action was necessary; and, (3) that Shell was the responsible party. At that point HDI's entitlement to recover attorney fees was at an end.

14. Because the EMCON report determined that no threat to the public health existed, HDI's complaint and first amended complaint did not contain any CERCLA causes of action. HDI's second amended complaint was filed April 23, 1990, thirteen (13) months after filing of the complaint. HDI's dollars spent on pursuing their state law claims before filing their CERCLA claim are clearly not recoverable. Even after filing the second amended complaint, none of HDI's discovery was directed to identifying threats to public health and appropriate remediation measures. In the discovery that did take place, CERCLA was but one of nine causes of action. Using the Pease & Curren allocation concept, at best, one ninth of HDI's attorney's fees after April 23, 1990 are recoverable.[1]

15. Finally, to recover any attorney fees at all HDI must prove that its response costs were consistent with the national contingency plan. Cadillac Fairview/California, Inc. v. Dow Chemical Company 840 F.2d 691, 695 (9th Cir.1988); See also U.S. v. Stringfellow 661 F.Supp. 1053, 1062 (C.D.Cal. 1987). HDI cannot prove such consistency if only for the reason that they cannot show a threat to public health or that any proper site characterization and clean-up have occurred.

---

[1]The Pease & Curren court specifically limits plaintiff's recovery to attorney's fees and does not make costs (including such items as fees paid to experts, testing, etc.) recoverable.

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CONCLUSION

16. Attorney fees, but not costs, are recoverable under CERCLA in a proper situation. That situation as plead in Pease & Curren requires, clean-up of hazardous waste that has been identified as a sufficient threat to public health to require sufficient to justify responsive action. Even then, attorney's fees are to be allocated among plaintiff's various causes of action. HDI's cannot show the pre-requisite threat to public health sufficient to justify its responsive actions nor actions consistent with the national contingency plan. Even if it can surmount those hurdles, HDI's attorney's fees must be allocated before they can be awarded by this court.

Dated: June 19, 1991

SCHREIBER & HORN, INC.

Mark Schreiber
Of Attorneys for Defendants

LIST OF TITLE SEARCH REFERENCES

Title Search References (Included in Attachment II)

B-1	Indenture conveying Parcels F, H, H-1, and I from John R. Johnston to the Central Pacific Railroad Co. of California, filed October 14, 1868. Source: Petroleum Properties Corporation
B-1	Grant Deed conveying an undivided one-half interest of a 370.82 acre tract of land in the southern portion of the site including Lots 13-16, 33-40, 58-62 from Susana Dominguez del Amo to Gregorie del Amo, filed on September 28, 1922. Source: Westsearch Resources Company
B-2	Corporation Quitclaim Deed quitclaiming an easement for highway purposes which includes Lots 62, 62 and 64 from Title Insurance and Trust Company to the State of California, filed on August 8, 1938. Source: Westsearch Resources Company
B-3	Corporation Deed conveying portions of Lots 13, 36, 37, 61, and 62 and a portion of Vermont Street, reserving all oil and mineral rights and certain rights and easements including easement for street purposes and right to cross with pipe lines for the conveyance of water, gas, oil or other substances from Del Amo Estate Company, a Corporation to The City of Los Angeles a municipal corporation of the State of California, filed on September 3, 1942. Consideration was paid by the Department of Water and Power of the City of Los Angeles on behalf of the City. Source: Westsearch Resources Company
B-4	Quit Claim Corporation Deed quitclaiming right to develop water and construct Pumping Plants in portions of Lots 13, 36, 37, 61, 62 from Dominguez Water Corporation to The City of Los Angeles, filed on September 3, 1942. Consideration was paid by the Department of Water and Power on behalf of the City. Source: Westsearch Resources Company
B-5	Corporation Quitclaim Deed quitclaiming the northern 100 feet of Lots 36, 37, 61 and 62 and portions of Lot 13 from Del Amo Estate Company to Defense Plant Corporation, filed on November 16, 1942. Source: Westsearch Resources Company

B-6	Corporation Grant Deed conveying Lots 12 to 16 inclusive, 33 to 40 inclusive, and 58 to 65 inclusive excepting these portions of Lots 13, 36, 37, 61, 62 from Del Amo Estate Company to Defense Plant Corporation, filed on November 16, 1942. Source: Westsearch Resources Company
B-7	Grant Deed conveying all of Lot 17 from Ronald A. Newman and William I. Newman to Defense Plant Corporation, filed on November 25, 1942. Source: Westsearch Resources Company
B-8	Corporation Grant Deed conveying all of Lot 18 subject to rights of way and entry including right of entry for pipes from Title Insurance and Trust Company to L. F. Chamberlin and I. Baim, filed on August 16, 1930. Source: Westsearch Resources Company
B-9	Grant Deed conveying all of Lot 18 from Lawrence F. Chamberlin and Mary A. Chamberlin to Frank A. Elder, filed on September 28, 1931. Source: Westsearch Resources Company
B-10	Grant Deed conveying all of Lot 18 from Frank A. Elder to Lawrence F. Chamberlain and Mary A. Chamberlin, filed on September 20, 1935. Source: Westsearch Resources Company
B-11	Grant Deed conveying all of Lot 18 from Lawrence F. Chamberlin and Mary A. Chamberlin to Defense Plant Corporation, filed on November 20, 1942. Source: Westsearch Resources Company
B-12	Grant Deed conveying all of Lot 18 from I. Baim and Esther Baim to Defense Plant Corporation, filed on November 20, 1942. Source: Westsearch Resources Company
B-13	Grant Deed conveying all of Lots 19 and 20 from James S. Smith and Jean Singer Smith to Defense Plant Corporation, filed on November 20, 1942. Source: Westsearch Resources Company
B-14	Indenture conveying an undivided 1/3 interest in Lot 21, except the West 300 feet thereof from Clara D. Fulton, Administratix with the Will Annexed of the Estate of Sarah B. Fulton to Robert M. Fulton, filed on August 13, 1942. Source: Westsearch Resources Company
B-15	Grant Deed conveying the West 330 feet of Lot 21 from William Schwartz and Lena Schwartz to Defense Plant Corporation, filed on December 10, 1942. Source: Westsearch Resources Company

B-16 Grant Deed conveying an undivided one-third interest in Lot 21 from E. W. Minney and Gertrude M. Minney to Defense Plant Corporation, a corporation, filed on December 22, 1942.
Source: Westsearch Resources Company

B-17 Grant Deed conveying an undivided one-third interest in Lot 21, except the West 330 feet thereof from Robert M. Fulton to Defense Plant Corporation, filed on December 23, 1942. The date filed was provided by Westsearch Resources Company.
Source: Westsearch Resources Company

B-18 Grant Deed conveying an undivided one-third interest in Lot 21 except the West 330 feet thereof from G. M. Minney and Floy M. Minney to Defense Plant Corporation, filed on December 22, 1942.
Source: Westsearch Resources Company

B-19 Grant Deed conveying the southerly 45 feet of the northerly 270 feet of Lot 22 from Edward P. Brockman and Betty M. Brockman to Defense Plant Corporation, filed on January 20, 1943.
Source: Westsearch Resources Company

B-20 Grant Deed conveying the southerly 90 feet of the northerly 180 feet of Lot 22 from Benjamin F. Thompson and Grace E. Thompson to Defense Plant Corporation, filed on February 2, 1943.
Source: Westsearch Resources Company

B-21 Grant Deed conveying all of Lot 22 excepting the northerly 315 feet from Mark R. Elvidge to Defense Plant Corporation, filed on December 15, 1942.
Source: Westsearch Resources Company

B-22 Deed of Guardian conveying the southerly 45 feet of the northerly 225 feet of Lot 22 together with the appurtenances from May W. Brockman, the duly appointed, qualified and acting Guardian of the Estate of Earl F. Brockman to Defense Plant Corporation, filed on December 22, 1942.
Source: Westsearch Resources Company

B-23 Grant Deed conveying the southerly 45 feet of the northerly 225 feet of Lot 22 from May W. Brockman to Defense Plant Corporation, filed on December 22, 1942.
Source: Westsearch Resources Company

B-24 Grant Deed conveying the north 90 feet of Lot 22 from Carl C. Kissel and Ethel Kissel to Defense Plant Corporation, filed on March 16, 1943.
Source: Westsearch Resources Company

B-25 Declaration of Taking taking title in a portion of Lot 22 including portion of Rosemead Street by the United States of America from Certain Parcels of Land in the County of Los Angeles, State of California, filed on June 30, 1944 as Civil No. 2794-PH in the District Court of the United States for the Southern District of California Central Division.
Source: Westsearch Resources Company

B-26 Decree on Declaration of Taking Takes a portion of Lot 22 including portion of Rosemead Street by the United States of America from Certain Parcels of Land in the County of Los Angeles, State of California filed on July 10, 1944.
Source: Westsearch Resources Company

B-27 Final Judgment and Decree in Condemnation and Judgment for Deficiency decreeing just compensation for the taking of Portions of Lot 22 by the America from Defendants: Certain Parcels of Land in the County of Los Angeles, State of California filed on April 11, 1949.
Source: Westsearch Resources Company

B-28 Grant Deed conveying all of Lot 23 from Frank E. Andres and Belle Andres to Defense Plant Corporation filed on August 5, 1943.
Source: Westsearch Resources Company

B-29 Corporation Grant Deed conveying all of Lot 24 from Title Insurance and Trust Company to Charles Yager filed on December 22, 1939.
Source: Westsearch Resources Company

B-30 Grant Deed conveying Section B of Lot 24 subject to the condition that the Grantee will execute on demand a community Oil and Gas Lease with the other owners of Lot 24 in favor of the Grantor from Charles Yager to Sydmor Stern filed on February 6, 1940.
Source: Westsearch Resources Company

B-31 Grant Deed conveying Section D of Lot 24 subject to the condition that the Grantees will execute on demand a community Oil and Gas Lease with the other owners of Lot 24 in favor of the Grantor from Charles Yager to Murray Flaxman and Harry Weinstein filed on June 1, 1940.
Source: Westsearch Resources Company

B-32 Grant Deed conveying all of Lot 24 from Charles Yager to J.L. Feinfeld filed on July 15, 1940.
Source: Westsearch Resources Company

B-33 Assignment of 50% of interest in royalties and bonuses from any oil or gas produced on Section G of Lot 24 in consideration of Grantees services in obtaining contract to purchase Section G of Lot 24 from J. L. Feinfeld from Davis Kramer to Charles Yager filed on December 10, 1940.
Source: Westsearch Resources Company

B-34 Grant Deed conveying Section F of Lot 24 subject to the condition that the Grantees will execute on demand a community Oil and Gas Lease with the other owners of Lot 24 in favor of the Grantor from Jacob L. Feinfeld and Anna B. Feinfeld to Joe Axelrod and Sadie Axelrod filed on April 18, 1941.
Source: Westsearch Resources Company

B-35 Grant Deed conveying Section G of Lot 24 subject to the condition that Grantee will execute on demand a community Oil and Gas Lease with the other owners of Lot 24 in favor of the Grantor from Jacob L. Feinfeld and Anna B. Feinfeld to Davis Kramer and Bessie Kramer filed on November 4, 1941.
Source: Westsearch Resources Company

B-36 Deed sssigning 50% of any of landowner's royalties in any oil and gas production in Section G Lot 24 from Davis Kramer and Bessie Kramer to Morris Rabinowitz filed on February 18, 1942.
Source: Westsearch Resources Company

B-37 Grant Deed conveying Section G of Lot 24 excepting a 75% interest in landowner royalties from any oil and gas production from Davis Kramer and Bessie Kramer to James Berardino and Mary Berardino filed on January 31, 1942.
Source: Westsearch Resources Company

B-38 Grant Deed conveying Section H of Lot 24 from J.L. Feinfeld and Anna B. Feinfeld to Defense Plant Corporation filed on November 27, 1942.
Source: Westsearch Resources Company

B-39 Grant Deed conveying Section E of Lot 24 from Edith Izenman and Aaron Izenman to Defense Plant Corporation filed on November 27, 1942.
Source: Westsearch Resources Company

B-40 Grant Deed conveying Section C of Lot 24 from Maurice L. Stern and Marsha Stern to Defense Plant Corporation filed on November 27, 1942.
Source: Westsearch Resources Company

B-41	Grant Deed conveying Section C of Lot 24 subject to the condition that the Grantee will execute upon demand a community Oil and Gas lease with the other owners of Lot 24 favor of the Grantor from Jacob L. Feinfeld and Anna B. Feinfeld to Maurice L. Stern filed on November 27, 1942. Source: Westsearch Resources Company
B-42	Grant Deed conveying Section E of Lot 24 subject to the condition that the Grantee will execute and deliver a community Oil and Gas Lease upon demand with the other owners of Lot 24 in favor of the Grantor from Jacob L. Feinfeld and Anna B. Feinfeld to Edythe Izewman filed on November 27, 1942. Source: Westsearch Resources Company
B-43	Grant Deed conveying Section A of Lot 24 from Rose Weiss to Defense Plant Corporation filedl on November 27, 1942. Source: Westsearch Resources Company
B-44	Grant Deed conveying Section A of Lot 24 subject to the condition that the Grantee will execute upon demand a community Oil and Gas lease with the other owners of Lot 24 in favor of the Grantor from Jacob L. Feinfeld and Anna B. Feinfeld to Rose Katz filed on November 27, 1942. Source: Westsearch Resources Company
B-45	Grant Deed conveying Section B of Lot 24 from Sydmor Stern to Defense Plant Corporation filed on December 1, 1942. Source: Westsearch Resources Company
B-46	Grant Deed conveying Section F of Lot 24 from Joe Axelrod and Sadie Axelrod to Defense Plant Corporation filed on November 30, 1942. Source: Westsearch Resources Company
B-47	Indenture quitclaiming all right, title and interest in and to the oil, gas and hydrocarbon substances in or under minerals in Section G of Lot 24 from Morris Rabinowitz to Defense Plant Corporation filed on August 19, 1943. Source: Westsearch Resources Company
B-48	Indenture quitclaiming all of Lot 24 from J.L. Feinfeld and Anna B. Feinfeld to Defense Plant Corporation filed on November 27, 1942. Source: Westsearch Resources Company
B-49	Grant Deed conveying Section G of Lot 24 from James Berardino and Mary Berardino to Defense Plant Corporation filed on August 19, 1943. Source: Westsearch Resources Company

B-50 Indenture quitclaiming Section G of Lot 24 from Davis Kramer and Bessie Kramer to Defense Plant Corporation filed on August 19, 1943.
Source: Westsearch Resources Company

B-51 Findings of Fact, Conclusions of Law, Final Judgment and Decree in Condemnation and Judgment for Deficiency decreeing just compensation to be paid to Murray Flaxman and Harry Weinsten for taking of Section D of Lot 24 by the United States of America from Certain Parcels of Land in the County of Los Angeles, State of California filed on February 24, 1949.
Source: Westsearch Resources Company

B-52 Quitclaim Deed quitclaiming Subdivision 13 of Lot 25 from Jacob Herman to Victor Liebman and Florence Liebman filed on March 26, 1940.
Source: Westsearch Resources Company

B-53 Grant Deed conveying the West half of Lot 25 from William Schwartz and Lena Schwartz to Defense Plant Corporation filed on December 10, 1942.
Source: Westsearch Resources Company

B-54 Grant Deed conveying the East half of Lot 25 from Jacob Herman and Minnie Herman to Defense Plant Corporation filed on December 28, 1942.
Source: Westsearch Resources Company

B-55 Indenture quitclaiming the East half of Lot 25 from Victor Liebman and Florence Liebman to Jacob Herman from December 28, 1942.
Source: Westsearch Resources Company

B-56 Grant Deed conveying an undivided one-half interest in Lot 26 from H.V. Copeland and Agnes E. Copeland to Lewis F. Marquis filed on September 10, 1942.
Source: Westsearch Resources Company

B-57 Grant Deed conveying all of Lot 26 from Lewis F. Marquis and Jane Marquis, his wife and H.V. Copeland and Agnes E. Copeland, his wife, and Jessica B. Coffin, widow to Defense Plant Corporation filed on December 17, 1942.
Source: Westsearch Resources Company

B-58 Grant Deed conveying all of Lot 27 from George A. McDole and Grace McDole to Defense Plant Corporation filed on November 30, 1942.
Source: Westsearch Resources Company

B-59	Corporation Grant Deed conveying all of Lot 28 from Title Insurance and Trust Company to Defense Plant Corporation filed on January 19, 1943. Source: Westsearch Resources Company
B-60	Corporation Grant Deed conveying all of Lot 29 subject to rights of entry and way including the right to enter and construct pumping plants, the right of way for pipes, ditches and canals as conveyed to the Dominguez Water Company and the right of way and entry on roads and for purposes of water lines and other uses from Title Insurance and Trust Company to John G. Munholland filed on March 13, 1943. Source: Westsearch Resources Company
B-61	Grant Deed conveying all of Lot 29 subject to rights of entry and way including the right to enter and construct pumping plants, right of way for pipes, ditches and canals as conveyed to the Dominguez Water Company and right of way and entry on roads and for purposes of water lines and other uses from John G. Munholland and Lulu M. Munholland to Defense Plant Corporation filed on March 13, 1943. Source: Westsearch Resources Company
B-62	Grant Deed conveying an undivided one-half interest in Lot 31 from Caroline Grossourth to Defense Plant Corporation filed on February 15, 1943. Source: Westsearch Resources Company
B-63	Order Confirming Sale of Real Estate In the Matter of the Estate of Morris B. Levy also known as Morris Levy of Lot 30 and an undivided one-half interest in Lot 31 to Defense Plant Corporation filed on February 15, 1943. Source: Westsearch Resources Company
B-64	Deed of Executor conveying Lot 30 and an undivided one-half interest in Lot 31 from Leo Levy, as the duly appointed, qualified and acting Executor of the Last Will and Testament of Morris B. Levy to Defense Plant Corporation filed on February 15, 1943. Source: Westsearch Resources Company
B-65	Grant Deed conveying Lot 32 subject to right of entry and way for transmission and flow of water and right to enter and construct pumping plants and right of way for pipes as conveyed to the Dominguez Water Company from Samuel H. Marcuse and Sarah Wolf Marcuse to American Trading Company, Ltd. filed December 17, 1937. Source: Westsearch Resources Company

B-66 Corporation Grant Deed conveying Lot 32 subject to the right of entry and way for the transmission and flow of water and the right to enter and construct pumping plants and the right of way for pipes as conveyed to the Dominguez Water Company; also subject to the right of way for Title Insurance and Trust Company to maintain and repair pipes for conducting water for irrigation and other uses from American Trading Company, Ltd. to Lester G. Marcuse and Marguerite Effie MacDonald, filed on July 8, 1940.
Source: Westsearch Resources Company

B-67 Grant Deed conveying Lot 32 from Lester G. Marcuse and Marguerite Effie Marcuse to Francis Edmonds, filed on April 7, 1941.
Source: Westsearch Resources Company

B-68 Grant Deed conveying Lot 32 from Francis Edmonds and Charlotte F. Edmonds to Defense Plant Corporation, filed on February 19, 1943.
Source: Westsearch Resources Company

B-69 Quitclaim Deed quitclaiming Lot 32 from American Trading Company, Ltd. to Defense Plant Corporation, filed on February 19, 1943.
Source: Westsearch Resources Company

B-70 Quitclaim Deed quitclaiming Lot 32 from Samuel H. Marcuse to Defense Plant Corporation, filed on February 19, 1943.
Source: Westsearch Resources Company

B-71 Grant Deed conveying all of Lot 41 except the Southerly 155 feet thereof from Olive M. Bovee and Lee M. Bovee to Defense Plant Corporation, filed on November 25, 1942.
Source: Westsearch Resources Company

B-72 Grant Deed conveying the Southerly 155 feet of Lot 41 subject to all conditions, easements, restrictions, and rights of way of record from Samuel Fegen, Betty Fegen Gardner and Solomon Fegen, as Trustees, under the terms and conditions of a Trust Agreement dated July 13, 1938, recorded in Book 19514, Page 18 to Defense Plant Corporation, filed on December 6, 1943.
Source: Westsearch Resources Company

B-73 Quitclaim Deed quitclaiming all Lot 42 from J. Bertisch and Anna Bertisch to Max Rosenblatt and Mary Rosenblatt, filed on May 5, 1943.
Source: Westsearch Resources Company

B-74 Grant Deed conveying all of Lot 42 from Max Rosenblatt and Mary Rosenblatt, husband and wife, and William P. Redmond and Mamie Redmond to Defense Plant Corporation, filed on May 5, 1943.
Source: Westsearch Resources Company

B-75 Grant Deed conveying Lot 42 from Jenny Epstein Edelstein to Defense Plant Corporation, filed on May 5, 1943.
Source: Westsearch Resources Company

B-76 Grant Deed conveying Lot 42 from Abe Rosenfeld and Helen Rosenfeld to Defense Plant Corporation filed on May 5, 1943.
Source: Westsearch Resources Company

B-77 Corporation Grant Deed conveying Lot 42 from Title Insurance and Trust Company to Abe Rosenfeld, Mrs. J. Epstein, Max Rosenblet and W.P. Redmond filed on May 5, 1943.
Source: Westsearch Resources Company

B-78 Grant Deed conveying an undivided one-third interest in a portion of Lot 43 reserving easements for road purposes and a right of way for public utilities from Beverly Motter to The Gagnon Company, Inc., filed on Februa ry 8, 1944.
Source: Westsearch Resources Company

B-79 Quit Claim Deed quitclaiming an undivided one-third interest in Lot 43 from Estelle Pearl to Beverly Mottor, filed on February 8, 1944.
Source: Westsearch Resources Company

B-80 Final Judgment and Decree in Condemnation decreeing just compensation to be paid to A.D. Gagnon for the taking of the defendant's undivided one-third interest in portions of Lot 43 on June 30, 1944 by the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California filed on June 12, 1945.
Source: Westsearch Resources Company

B-81 Final Judgment and Decree in Condemnation decrees just compensation to be paid to Minnie Marcus for the taking of the defendant's undivided two-thirds interest in portions of Lot 43 on June 30, 1944 by the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California filed on June 25, 1945.
Source: Westsearch Resources Company

B-82 Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Lily Berveiler's for taking of her one-half interest in portions of Lot 43 on July 30, 1944 by the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California, filed on July 23, 1945.
Source: Westsearch Resources Company

B-83 Final Judgment and Decree in Condemnation Decrees of just compensation to be paid to Edith M. Berveiler's for the taking of her undivided one-half interest in portions of Lot 43 on June 30, 1944 by the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California, filed on June 25, 1946.
Source: Westsearch Resources Company

B-84 Grant Deed conveying Lot 44 from Charles G. Dooros and Jessie A. Dooros to Defense Plant Corporation, filed on February 17, 1943.
Source: Westsearch Resources Company

B-85 Grant Deed conveying a portion of Lot 45 to Joseph A. Diehl from Defense Plant Corporation, filed on February 5, 1943.
Source: Westsearch Resources Company

B-86 Grant Deed conveying the East 395 feet of Lot 45 excluding the easternmost 15 feet from James R. McKerlie and Ruth B. McKerlie to Defense Plant Corporation, filed on December 7, 1942.
Source: Westsearch Resources Company

B-87 Indenture quitclaiming that portion of Lot 45 described in the Grant Deed dated October 15, 1942 from Joseph A. Diehl to James R. McKerlie filed on December 7, 1942.
Source: Westsearch Resources Company

B-88 Final Judgment and Decree in Condemnation decreesing just compensation to be paid to persons, including Eli Friedman for taking of portion of Lot 45 on June 30, 1944 by the United States of America from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on February 15, 1945.

B-89 Grant Deed conveying to each an undivided one-sixth interest in Section B of Lot 46 from C.C. Nichols to F.C. Nichols, unmarried, and Mary Edith Nichols Negus, filed on January 21, 1930.
Source: Westsearch Resources Company

B-90 Grant Deed conveying an undivided one-half interest in Section B of Lot 46 from Mary Edith Nichols Negus to Frank Culver Nichols, filed on January 9, 1931.
Source: Westsearch Resources Company

B-91 Grant Deed conveying Section B of Lot 46 from Frank Culver Nichols, also known as F. C. Nichols and Sallie Stevens Nichols to Defense Plant Corporation, filed on December 17, 1942.
Source: Westsearch Resources Company

B-92 Grant Deed conveying Section C of Tract 46 from Arthur M. Schoenberg and Ruth M. Hallin to Defense Plant Corporation filed on January 27, 1944.
Source: Westsearch Resources Company

B-93 Commissioner's Deed conveying a portion of Lot 46 from G. Loshoncy, as Commissioner to Defense Plant Corporation, filed on June 15, 1944.
Source: Westsearch Resources Company

B-94 Grant Deed conveying all of Lot 47 from George V. Henkel, also known as G. V. Henkel, and Alvina Henkel, to Norman N. Henkel, filed on March 27, 1934.
Source: Westsearch Resources Company

B-95 Grant Deed recorded to correct legal description in deed dated March 27, 1934 recorded in Book 12643 page 28 affecting Lot 47 in conveyance from George V. Henkel, also known as G.V. Henkel, and Alvina Henkel, to Norman N. Henkel filed on December 1, 1964.
Source: Westsearch Resources Company

B-96 Grant Deed conveying all of Lot 47 from Norman N. Henkel and Margaret J. Henkel to Defense Plant Corporation filed on July 9, 1943.
Source: Westsearch Resources Company

B-97 Quitclaim Deed quitclaiming Section A of Lot 48 from Louise S. Lens to C. R. Douglas, filed on December 10, 1943.
Source: Westsearch Resources Company

B-98 Grant Deed conveying Section C of Lot 48 and a right of way for driveway purposes from Abruham Finkelstein and Adel Finkelstein to Defense Plant Corporation, filed on November 28, 1942.
Source: Westsearch Resources Company

B-99 Commissioner's Deed conveying Section A of Lot 48 from G.M. Carpenter, as Commissioner to Clinton R. Douglas filed on January 5, 1943.
Source: Westsearch Resources Company

B-100	Grant Deed conveying Section A of Lot 48 from Clinton R. Douglas, also known as C.R. Douglas and XXX Douglas, to Defense Plant Corporation, filed on January 5, 1943. The wife's name is illegible on the document reviewed. Source: Westsearch Resources Company
B-101	Grant Deed conveying Section D of Lot 48 including a right of way for driveway purposes from Louis Schwartz and Jeannette Schwartz to Defense Plant Corporation, filed on February 19, 1943. Source: Westsearch Resources Company
B-102	Grant Deed conveying Section E of Lot 48 with a right of way for driveway purposes from Benjamin Kendal to Defense Plant Corporation, filed on April 24, 1943. Source: Westsearch Resources Company
B-103	Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Soteras Construction Company, Ltd. for the taking of portions of Lot 48 on June 30, 1944 by the United States of America from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on October 25, 1944. Source: Westsearch Resources Company
B-104	Final Judgment and Decree in Condemnation decreeing just compensation to be paid to parties including Ida Kroll for the taking of portions of Lot 48 on June 30, 1944, by the United States of America from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on December 28, 1944. Source: Westsearch Resources Company
B-105	Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Albert E. Simon and Abe Richman, Executors of the Estate of Anna Abrums for the taking of a portion of Lot 48, including an easement for driveway purposes on June 30, 1944, by the United States of America, from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on February 12, 1945. Source: Westsearch Resources Company
B-106	Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Tillie Gold for portions of Lot 48 vesting in Plaintiff on June 30, 1944, by the United States of America, from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on March 16, 1945. Source: Westsearch Resources Company

B-107

Final Judgment and Decree in Condemnation and Judgment for Deficiency decreeing just compensation to be paid to William Willner and Anna Willner for the taking of defendants' undivided one-half interest in portions of Lot 48 taken and vested in Plaintiff on June 30, 1944 by the United States of America from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California filed on March 16, 1945.
Source: Westsearch Resources Company

B-108

Final Judgment and Decree in Condemnation and Judgment for Deficiency Decrees of just compensation to be paid to Rose Plotnik for the taking of the defendant's undivided one-half interest in portions of Lot 48 on June 30, 1944, by the United States of America from Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California, filed on April 18,1945.
Source: Westsearch Resources Company

B-109

Amended Final Judgment and Decree in Condemnation decreeing just compensation to be paid to William Willner and Anna Willner for the taking of the defendants' undivided one-half interest in portions of Lot 48 on June 30, 1944, by the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California, filed on July 6, 1945.
Source: Westsearch Resources Company

B-110

Final Judgment and Decree in Condemnation decreeing of just compensation to be paid to Dolores Buck, daughter of Alex Gersztewt, deceased for the taking of portions of Lot 48 on June 30, 1944 bu the United States of America from Certain Parcels of Land in the City and County of Los Angeles, State of California, filed on September 7, 1945.
Source: Westsearch Resources Company

B-111

Findings of Fact, Conclusions of Law, Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Nat Kahn for the taking of portions of Lot 48 on June 24, 1944 from the United States of America from Certain Parcels of Land in the County of Los Angeles, State of California; City of Los Angeles, a Municipal Corporation, filed on February 24, 1949.
Source: Westsearch Resources Company

B-112 Findings of Fact, Conclusions of Law, Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Ida Heyman for the taking of portions of Lot 48 on June 30, 1944 by the United States of America from Certain Parcels of land in the County of Los Angeles, State of California; City of Los Angeles, a Municipal Corporation, filed on February 24, 1949.
Source: Westsearch Resources Company

B-113 Findings of Fact, Conclusions of Law, Final Judgment and Decree in Condemnation decreeing just compensation to be paid to Dave Jeffee for the taking of portions of Lot 48 on June 30, 1944, by the United States of America from Certain Parcels of Land in the County of Los Angeles, State of California; City of Los Angeles, a Municipal Corporation, filed on March 22, 1949.
Source: Westsearch Resources Company

B-114 Grant Deed conveying all of Lot 54 from Harry L. Gilbert and Rachel Gilbert to John K. Hill and Teresa Hill filed on July 20, 1939.
Source: Westsearch Resources Company

B-115 Grant Deed conveying all of Lot 54 from John H. Hill and Teresa Hill to Defense Plant Corporation, filed on December 17, 1942.
Source: Westsearch Resources Company

B-116 Corporation Grant Deed conveying all of Lot 55 from Union-That-Nothing-Be-Lost, Inc. to Defense Plant Corporation December 22, 1942.
Source: Westsearch Resources Company

B-117 Grant Deed conveying Section B of Lot 56 from The First National Bank of Vista to Arthur Schleicher and Evlyn I. Schleicher, filed on March 20, 1939.
The date filed was illegible on this document. The documents on either side of it were filed in 1939 on March 20 and March 21. It appeared the date the document filed was March 20 rather than March 21.
Source: Westsearch Resources Company

B-118 Grant Deed conveying Section C of Lot 56 from The First National Bank of Vista to Arthur Schleicher and Evlyn I. Schleicher, filed on March 20, 1939.
Source: Westsearch Resources Company

B-119 Grant Deed conveying Section B of Lot 56 from Arthur Schleicher and Evlyn I. Schleicher to Defense Plant Corporation, filed on November 19, 1942.
Source: Westsearch Resources Company

B-120 Quitclaim Deed quitclaiming all of Lot 56 excepting and reserving rights of way and easements for existing water lines and the right to maintain and repair them from Dominguez Water Corporation to Defense Plant Corporation, filed on November 19, 1942 (42 is illegible).
Source: Westsearch Resources Company

B-121 Grant Deed conveying Section C of Lot 56 from Fred F. Langer and C. Claire Langer to Defense Plant Corporation, filed on November 27, 1942.
Source: Westsearch Resources Company

B-122 Grant Deed conveying the North one-half of Lot 56 (Section A) from Alexander Hamilton and Lenora Hamilton to Defense Plant Corporation, filed on November 28, 1942.
Source: Westsearch Resources Company

B-123 Trustee's Deed Upon Sale conveying all of Lot 57 from Title Insurance and Trust Company to Jessie Carter White, filed on March 5, 1937
Source: Westsearch Resources Company

B-124 Grant Deed conveying all of Lot 57 from Jessie Carter White to Defense Plant Corporation, filed on November 30, 1942.
Source: Westsearch Resources Company

B-125 Grant Deed Conveys Lot 66 from P.E. Nelson to Defense Plant Corporation, filed on December 16, 1942.
Source: Westsearch Resources Company

B-126 Grant Deed conveying Lot 67 subject to à lien from Three Brothers Service, Ltd., a corporation, H.O'Grodnick, a single man, Daniel Rubenstein and Sadie Rubenstein, his wife, and David Rubenstein and Dena Rubenstein, to Defense Plant Corporation, filed on December 3, 1942.
Source: Westsearch Resources Company

B-127 Grant Deed conveying a portion of Lot 68 from Harry B. Green and Elizabeth P. Green to Defense Plant Corporation, filed on December 1, 1942.
Source: Westsearch Resources Company

B-128 Grant Deed conveying Lot 69 from Ethel May Bechenhauer to Defense Plant Corporation, filed on May 12, 1943.
Source: Westsearch Resources Company

B-129 Order for Immediate Possession Under the Second War Powers Act of 1942 orderingand adjudging that the United States of America is vested with the right to immediate and exclusive possession of Lots 13 through 48 inclusive and Lots 54 through 69 inclusive subject an interest by the City of Los Angeles and including portions of adjacent streets, filed as 2794-PH Civil in the District Court of the United States in and for the Southern District of California Central Division, on March 8, 1943.
Source: Westsearch Resources Company

B-130 Affidavit of Paul M. Lee in Support of Order for Immediate Possession acknowledging that since the Government took possession of property on August 12, 1942, certain parties have received settlements and payment, for No. 2794-PH filed in Civil in the District Court of the United States in and for the Southern District of California Central Division on March 8, 1943.
Source: Westsearch Resources Company

B-131 Lis Pendens noticing the filing of Complaint in Condemnation for certain the property subject to easements for road purposes, easements to the Metropolitan Water District and subject to an interest acquired by the City of Los Angeles recorded in Book 19438, Page 384 for the United States of America versus Certain Parcels of Land in the County of Los Angeles, State of California filed on March 25, 1943.
Source: Westsearch Resources Company

B-132 Quitclaim Deed quitclaimsing Lots 12 to 48 inclusive and Lots 54 to 69 inclusive from Dominguez Water Corporation to Defense Plant Corporation, filed on October 4, 1943.
Source: Westsearch Resources Company

B-133 Corporation Quitclaim Deed quitclaiming Lots 12 to 48 inclusive and Lots 54 to 69 inclusive from Title Insurance and Trust Company to Defense Plant Corporation, filed on October 4, 1943.
Source: Westsearch Resources Company

B-134 Notice of Completion of Manufacturing Plant by Goodyear Synthetic Rubber Corporation effecting Lots 19 through 30 and 43 through 48 given by Defense Plant Corporation, filed on September 21, 1944.
Source: Westsearch Resources Company

B-135

Declaration of Taking takes easements vested in the Metropolitan Water District of Southern California excepting and reserving to the same a water transportation permanent easement and right-of-way in Lots 62, 63, 64, 65, 66 67, 68 and 69 by the United States of America from Certain Interests in and to Certain Land in the County of Los Angeles, State of California; Metropolitan Water District of Southern California, a municipal corporation; et al. filed as No. 4453-Y in the District Court of the United States in and for the Southern District of California Central Division, on May 14, 1945.
Source: Westsearch Resources Company

B-136

Decree on Declaration of Taking adjudging and decreeing immediate and exclusive possession of certain easements vested in the Metropolitan Water District of Southern California in portions of Lots 62, 63, 64, 65, 66, 67, 68 and 69 excepting the rights of the City of Los Angeles to Northerly 100 feet excepting and reserving to the Metropolitan Water District a water transportation permanent easement and right-of-way in Lots 62, 63, 64, 65, 66 67, 68 and 69 by the United States of America from Certain Interests in and to Certain Land in the County of Los Angeles, State of California; Metropolitan Water District of Southern California, a municipal corporation, filed on May 21, 1945.
Source: Westsearch Resources Company

B-137

Amended Declaration of Taking amending the Declaration of Taking dated May 2, 1945 including amendments to the easements which were taken and those with excepted interest to the Metropolitan Water District in Lots 62, 63, 64, 65, 66, 67, 68 and 69 by the United States of America from Certain Interests in and to Certain Land in the County of Los Angeles, State of California; et al., filed as No. 4453-Y Civil in the District Court of the United States in and for the Southern District of California Central Division, on January 31, 1947.
Source: Westsearch Resources Company

B-138

Final Judgment and Decree in Condemnation and Judgment for Deficiency decreeing just compensation for the taking of a right-of-way and removal of a six-inch gasoline pipeline owned by General Petroleum Corporation in Lots 17, 32, 41, 57 and 66 by United States of America against Certain Parcels of Land in the County of Los Angeles, State of California, et al., filed on September 23, 1947.
Source: Westsearch Resources Company

B-139 Final Judgment and Decree in Condemnation decreeing just compensation to be paid to the City of Los Angeles for the taking of portions of Rosemead, Knox and Francisco Streets by the United States of America, filed on November 21, 1947,
Source: Westsearch Resources Company

B-140 Quitclaim Deed conveying property depicted in Figure 9 portions of Lots 24, 35, 48 and a portion of Rosemead Ave. from Reconstruction Finance Corporation to Columbia Steel Company, filed on December 22, 1948.
Source: Westsearch Resources Company

B-141 Corporation Quitclaim Deed quitclaiming all interest in Tract 4671 from Title Insurance and Trust Company to Dominguez Estate Company, fileld on February 28, 1952.
Source: Westsearch Resources Company

B-142 Quitclaim Deed quitclaiming rights of way and easements for the purpose of laying, installing, repairing, replacing and maintaining water pipes and mains and other necessary water service equipment and material from Dominguez Estate Company to Dominguez Water Corporation, filed on February 28, 1952.
Source: Westsearch Resources Company

B-143 Complaint in Condemnation demanding judgment that portions of Lots 24, 25, and 48 including portions of Rosemead Avenue condemned, filed by the United States of America against 214 Acres of Land, More or Less, in the County of Los Angeles, State of California; County of Los Angeles, a body politic and corporate; State of California, a corporation sovereign; Columbia-Geneva Steel Division, U.S. Steel Company, a corporation, and unknown owners, on March 31, 1952.
Source: Westsearch Resources Company

B-144 Deed granting portions of Lots 24, 25 and 48 as well as property outside the site boundary subject to easements vested in the instrument for water distribution systems public street purposes, public road and highway purposes from United States Steel Company (Columbia-Geneva Steel Division) to the United States of America, filed on December 10, 1952.
Source: Westsearch Resources Company

B-145 Deed quitclaiming all right, title and interest in the properties known as Plancors 963, 929 and 611, excluding portions deeded to the Department of Water and Power of the City of Los Angeles including portions of streets and subject to pipeline easements from Rubber Producing Facilities Disposal to Shell Chemical Corporation, filed on April 25, 1955.
Source: Westsearch Resources Company

B-146

Deed quitclaiming all right, title and interest in a pipeline easement from Rubber Producing Facilities Disposal Commission to Standard Oil Company of California, filed on April 25, 1955.
Source: Westsearch Resources Company

B-147

Judgment Correcting Errors in the Records and Revesting Certain Land, and Stipulation Therefor correcting the June 30, 1944 Declaration of Taking (B-94B) to reflect the taking subject to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines of record and rights of way and easements vested in Dominguez Water Corporation, in United States of America vs. Certain Parcels of Land in the County of Los Angeles, State of California, etc., et al. filed as No. 2794-PH Civil in the United States District Court Southern District of California Central Division, on July 20, 1956.
Source: Westsearch Resources Company

B-148

Assignment and Transfer of Sanitary Sewer Line quitclaiming interest in sanitary sewer lines located in Lots 37-47, from Shell Chemical Corporation to County Sanitation District No. 8 of Los Angeles County, filed on February 27, 1958.
Source: Westsearch Resources Company

B-149

License Agreement granting license and privilege to lay, construct, maintain, operate and repair pipe lines in portions of Lots 19, 20, 30 and 43 by Shell Chemical Corporation to Standard Oil Company of California, filed on January 7, 1959.
Source: Westsearch Resources Company

B-150

Quitclaim Deed quitclaiming interest in portions of Lots 24, 25 and 48 reserving a perpetual right to discharge storm and surface drainage water into drainage facilities from The United States of America to the City of Los Angeles filed on August 14, 1959.
Source: Westsearch Resources Company

B-151

Motion for Order of Dismissal and Order Thereon dismissing the condemnation proceeding dated March 31, 1952 with regard to portions of Lots 24, 25 and 48 in United States of America vs.214 Acres of Land, more or less, in Los Angeles County, State of California, Columbia-Geneva Steel Division, United States Steel Company, a corporation, et al. filed as No. 13971-WB in the United States District Court Southern District of California Central Division, on August 3, 1959.
Source: Westsearch Resources Company

B-152 Mechanic's Lien claiming a lien on portions of Lots 54-59, commonly described as 19821 Hamilton Street filed by Sully-Miller Contracting Company against Shell Chemical Co., on May 7, 1970.
Source: Westsearch Resources Company

B-153 Mechanic's Lien claiming a lien on 19821 S. Hamilton Street filed by M.O. Dion & Sons, Inc. against Shell Chemical Co., on May 20, 1970.
Source: Westsearch Resources Company

B-154 Mechanic's Lien claiming a lien on 19821 So. Hamilton Street filed by DeCristo Concrete Accessory Co., Inc. against Shell Chemical Company, on June 1, 1970
Source: Westsearch Resources Company

B-155 Mechanic's Lien claiming a lien on 19821 South Hamilton Street for Effluent Project: #131-4-LAX filed by Koch Steel Company against Shell Chemical Company on June 8, 1970.
Source: Westsearch Resources Company

B-156 Mechanic's Lien claiming a lien on 19821 S. Hamilton, Lot 69 for construction of a 1,500,000 gallon storage tank filed by Maas & Feduska, Inc. dba Horn & Barker against Shell Oil Co., dba Shell Chemical Co. on June 15, 1970.
Source: Westsearch Resources Company

B-157 Mechanic's Lien claiming a lien on 19821 So. Hamilton St. for performing work a on waste water treatment plant filed by Instrument Systems Company against Shell Chemical Corporation, on July 10, 1970.
Source: Westsearch Resources Company

B-158 Mechanic's Lien claiming a lien on 19821 South Hamilton, Lot 54 thru Lot 69, filed by San Pedro Rentals Inc. against Shell Oil Company; Shell Chemical Division, on August 4, 1970.
Source: Westsearch Resources Company

B-159 Mechanic's Lien claiming a lien on Shell Chemical Company Torrance Plant Lots 54-59, filed by G.W. Van Fossan, Inc. against Shell Chemical Company, on September 10, 1970.
Source: Westsearch Resources Company

B-160

Waiver of Damages, Indemnification Agreement and Right of Ingress and Egress-Covenant to Run with the Land granting the City the right of ingress and egress and easement of right of way In consideration of the City of Los Angeles granting permission to Shell Chemical Company to install, construct and maintain a pipeline across Vermont Avenue south of Knox Avenue from Shell Chemical Company, a division of Shell Oil Company to City of Los Angeles-Department of Public Works, filed on October 6, 1970.
Source: Westsearch Resources Company

B-161

Notice of Lis Pendens Notice title to 54-69, also known as 19821 South Hamilton Street is in question, filed by Instrument Systems Company against Houben Industries, Inc. a corporation Shell Oil Company, a corporation, and Shell Chemical Company, a corporation, and Does I through L., on October 1, 1970.
Source: Westsearch Resources Company

B-162

Irrevocable Offer to Dedicate an easement for public street purposes in portions of Lots 12, 13, 36, and 37, 54 and 57 inclusive, 41-48 inclusive, 37-40 inclusive, and 58-61 inclusive from Shell Chemical Company, a Division of Shell Oil Company, to The City of Los Angeles, filed on October 1, 1971.
Source: Westsearch Resources Company

B-163

Grant of Right of Way conveying right of way and easement to lay and install one or more underground pipelines for the purpose of transporting oil, petroleum or any of its products, gas, water and other substances from Shell Oil Company to Four Corners Pipeline Company, filed on December 12, 1972.
Source: Westsearch Resources Company

B-164

Grant of Right of Way conveying right of way and easement to lay and install one or more underground pipelines for the purpose of transporting oil, petroleum or any of its products, gas, water and any other substances from Shell Oil Company to Mobil Oil Corporation, filed on December 12, 1972.
Source: Westsearch Resources Company

B-165

Corporation Grant Deed conveying Lots 14 through 35, 36 through 48, 54 through 60 and 63 through 69 from Shell Oil Company to CC & F Western Development Co., Inc. December 15, 1972.
Source: Westsearch Resources Company

B-166 Corporation Grant Deed Conveys portions of Lots 13, 36, 37, 61 and 62 from Shell Oil Company to International Property Development Co., filed on December 15, 1972.
Source: Westsearch Resources Company

B-167 Short Form of Lease Lease affecting portions of Lots 59, 60 and 63-67 between CC & F Western development Co., Inc. and Shell Oil Company, filed on December 15, 1972.
Source: Westsearch Resources Company

B-168 Short Form of Lease affecting portions of Lots 61 and 62 between International Property Development Co., and Shell Oil Company, filed on December 15, 1972.
Source: Westsearch Resources Company

B-169 Assignment of Lessor's Interest in Lease with Shell Oil Company affecting Lots 59 and 60, and Lots 63 through 67 inclusive from CC & F Western Development Co., Inc., and Wells Fargo Bank, National Association, filed on December 15, 1972.
Source: Westsearch Resources Company

B-170 Assignment of Lessor's Interest in Lease with Shell Oil Company affecting Lots 61 and 62 from International Property Development Co. to Wells Fargo Bank, National Association, filed on December 15, 1972.
Source: Westsearch Resources Company

B-171 Assignment of Lease for Security assigning lease with Shell Oil Company affecting Lots 59 and 60, and Lots 63 through 67 inclusive from CC & F Western Development Co., Inc. to Wells Fargo Mortgage Investors, filed on December 15, 1972.
Source: Westsearch Resources Company

B-172 Assignment of Lease for Security assigning lease with Shell Oil Company dated December 15, 1972 affecting Lots 61 and 62 from International Property Development Co. to Wells Fargo Mortgage Investors, filed on December 15, 1972.
Source: Westsearch Resources Company

B-173 Quitclaim quitclaiming License Agreement dated September 3, 1958 from Standard Oil Company of California to Owners of Record, filed on February 1, 1973.
Source: Westsearch Resources Company

B-174 Mechanic's Lien claiming lien on 19821 S. Hamilton Avenue, filed by Signal Hill Electric, Inc. against Shell Chemical Company, on April 20, 1973.
Source: Westsearch Resources Company

B-175 Corporation Quitclaim Deed quitclaiming interest in the northern portion of Lot 13 from International Property Development Co. to CC & F Western Development Co., Inc., filed on August 23, 1974.
Source: Westsearch Resources Company

B-176 Assignment of Pipeline Rights conveying rights for the construction, operation, maintenance or removal of one pipeline for the transportation of liquids or gases or mixtures within the right of way granted to Four Corners by Shell Oil Company on December 11, 1972 from Four Corners Pipe Line Company to Standard Gas Company, filed on September 18, 1974.
Source: Westsearch Resources Company

B-177 Grant of Rights conveying public street and highway rights in portions of Lots 37 and 61 from The City of Los Angeles, a municipal corporation and the Department of Water and Power of the City of Los Angeles to the Board of Public Works of the City of Los Angeles, filed on December 13, 1974.
Source: Westsearch Resources Company

B-178 Declaration of Covenants and Restrictions States intention to develop property as an industrial center and lists restrictions for use of the property, located in or contained in or regarding Tracts 32036 and 20967, filed by CC&F Western Development Co., Inc. on March 28, 1975.
Source: Westsearch Resources Company

B-179 Corporation Grant Deed conveying Lot 6 of Tract 32036 reserving easements for railroad drill track and storm drainage from CC&F Western Development Co., Inc. to Associated Steel Industries, Inc., filed on March 31, 1975.
Source: Westsearch Resources Company

B-180 Corporation Grant Deed granting Parcel A of Parcel Map L.A. No. 3041 along with a non-exclusive underground utility easement in portions of Tract No. 32036 from CC&F Western Development Co., Inc. to Amoco Chemicals Corporation, filed on September 12, 1975.
Source: Westsearch Resources Company

B-181 Grant of Easement conveying an easement for repair and maintenance of fire protection pump stations and attendant pipe systems on a portion of Lots 54 and 55 of Tract 4671 from CC&F Western Development Co., Inc. to Golden Eagle Refining Company, Inc., filed on September 26, 1975.
Source: Westsearch Resources Company

B-182 Amendment to Declaration of Covenants and Restrictions includings modifications of the "Restricted Area" as described in the Declaration of Covenants and Restrictions dated March 28, 1974 filed by CC&F Western Development Co., Inc. on September 26, 1975.
Source: Westsearch Resources Company

B-183 Corporation Grant Deed conveying Lots 56-60 and 63-69 of Tract 4671 excepting the property included in the December 15, 1972 lease with Shell Oil Company from CC&F Western Development Co., Inc.to Golden Eagle Refining Company, Inc., filed on September 26, 1975.
Source: Westsearch Resources Company

B-184 Assignment of Lease assigning the December 15, 1972 lease with Shell Oil Company from CC&F Western Development Co., Inc. to Golden Eagle Refining Company, Inc., filed on September 26, 1975.
Source: Westsearch Resources Company

B-185 Corporation Grant Deed conveying Parcel B of Parcel Map Los Angeles No. 3037 excepting a railroad drill track easement from CC&F Western Development Co., Inc. to Pierre Naamo, filed on October 3, 1975.
Source: Westsearch Resources Company

B-186 Grant of Easement granting an easement for railroad, transportation and communication purposes over portions of Lots 12 and 13 of Tract 4671 from International Property Development Co. to Southern Pacific Transportation Company, filed on March 2, 1976.
Source: Westsearch Resources Company

B-187 Grant of Easement granting an easement for railroad, transportation and communication purposes over portions of Lot 1, Tract 32036 from CC&F Western Development Co., Inc. to Southern Pacific Transportation Company, filed on March 2, 1976.
Source: Westsearch Resources Company

B-188 Assignment of Easement assigning easement for railroad, transportation and communication purposes, previously reserved in the corporation Grant Deed dated March 28, 1975 (B-196) in Lot 6 of Tract 32036 from CC&F Western Development Co., Inc. to Southern Pacific Transportation Company, filed on March 2, 1976.
Source: Westsearch Resources Company

B-189 Corporation Grant Deed conveying Parcel A of Parcel Map L.A. No. 3109 from CC&F Western Development Co., Inc. to Hoya Lens of America, Inc., fileld on November 18, 1975.
Source: Westsearch Resources Company

B-190 Corporation Grant Deed conveying Parcel A of Parcel Map LA No. 3036 from CC&F Western Development Co., Inc. to State of Kuwait, filed on April 1, 1976.
Source: Westsearch Resources Company

B-191 A Deed of Trust between Associated Steel Industries, Inc. and Continental Auxiliary Company with Bank of America National Trust and Savings Association as beneficiary, using using Lot 6 of Tract No. 32036 as security for payment of a promissory note, filed on April 6, 1976.
Source: Westsearch Resources Company

B-192 Memorandum of Lease Lease affecting Parcel B of Parcel Map Los Angeles No. 3037 between Pierre Naamo and Jean Pierre Products, Inc., filed on February 10, 1975.
Source: Westsearch Resources Company

B-193 Corporation Quitclaim Deed quitclaiming property in the lease affecting Lots 61 and 62 of Tract No. 4671 dated March 15, 1972 reserving pipeline easement from Shell Oil Company to International Property Development Co., filed on March 11, 1976.
Source: Westsearch Resources Company

B-194 Corporation Quitclaim Deed quitclaiming property subject to lease in Lots 59, 60, 63 through 67 inclusive of Tract No. 4671 dated March 15, 1972 from Shell Oil Company to Golden Eagle Refining Company, Inc., filed on March 13, 1976.
Source: Westsearch Resources Company

B-195 Corporation Grant Deed conveying interest in Lots 21-28, 45-48, 54, 55, 13, 36, 37, 61 and 62 of Tract 4671 and Parcels B and C of L.A. No. 3041, Parcels B, C, and D of L.A. No. 3036, Parcel C of L.A. No. 3037, Parcel B. of L.A. No. 3109, and Parcels 2, 3 and 5 of Tract No. 32036 from CC&F Western Development Co., Inc., a California corporation and International Property Development Co., a corporation to CC&F Western Properties, Inc., filed on March 17, 1976.
Source: Westsearch Resources Company

B-196 Corporation Grant Deed conveys an undivided one-half interest in the property described in B-195 from Willowdale Investments, Inc. to CC&F-Willowdale Western Properties, filed on March 17, 1976.
Source: Westsearch Resources Company

B-197 Corporation Grant Deed conveying an undivided one-half interest in the property described in B-195 from CC&F Western Properties, Inc. to Willowdale Investments, Inc., filed on March 17, 1976.
Source: Westsearch Resources Company

B-198 Corporation Grant Deed conveying an undivided one-half interest in the property described in B-195 from CC&F Western Properties, Inc. to CC&F-Willowdale Western Properties, filed on March 17, 1976.
Source: Westsearch Resources Company

B-199 Assignment of the Lessor's Interest in Leases to CC&F Western Properties, Inc. assigning interest in unrecorded leases affecting the property described in B-195 from CC&F Western Development Co., Inc. to CC&F Western Properties, Inc., filed on March 17, 1976.
Source: Westsearch Resources Company

B-200 Assignment of One-Half of the Lessor-s Interest in Leases to Willowdale Investments, Inc. assigning an undivided one-half interest in unrecorded leases affecting the property described in B-195 from CC&F Western Properties, Inc. to Willowdale Investments, Inc., filed on March 17, 1976.
Source: Westsearch Resources Company

B-201 Assignment of One-Half of the Lessor-s Interest in Leases to CC&F Willowdale Western Property assigning an undivided one-half interest in unrecorded leases affecting the property described in B-195 from CC&F Western Properties, Inc. to CC & F-Willowdale Western Properties, filed on March 17, 1976.
Source: Westsearch Resources Company

B-202 Assignment of One-Half of the Lessor's Interest in Leases to CC&F-Willowdale Western Properties assigning an undivided one-half interest in unrecorded leases affecting the property described in B-195 from Willowdale Investments, Inc. to CC&F-Willowdale Western Properties filed on March 17, 1976.
Source: Westsearch Resources Company

B-203 Grant Deed conveying a portion of Parcel B of Parcel Map L.A. No. 3109 or Parcel B of 3208 excepting an easement for railroad transportation, communication, utility, storm drainage and related purposes, from CC&F-Willowdale Western Properties to Kosuga Furniture, Inc., filed on June 30, 1976.
Source: Westsearch Resources Company

B-204

Short Form Deed of Trust and Assignment of Rents between Associated Steel Industries, Inc. and Title Insurance and Trust Company with Ferro Union Corporation, as the beneficiary. The Deed uses Lot 6 Tract No. 32036 as security for payment of a promissory note, filed on August 30, 1976.
Source: Westsearch Resources Company

B-205

Grant Deed conveying Parcel A of Parcel Map L.A. No. 3208 reserving an easement for railroad transportation, communication, utility, storm drainage and related purposes from CC&F - Willowdale Western Properties, a partnership to California Toyoshima Co., Inc., filed on September 17, 1976.
Source: Westsearch Resources Company

B-206

Individual Grant Deed Conveys Parcel B of Parcel map LA No. 3209 reserving an easement for railroad transportation, communication, utility, storm drainage and related purposes from CC&F - Willowdale Western Properties to Edelbrock Corp., filed on August 4, 1976.
Source: Westsearch Resources Company

B-207

Grant Deed conveying Parcel C of Parcel Map LA No. 3041 reserving an easement for railroad spur track purposes, railroad transportation, communication, storm drainage and related purposes from CC&F - Willowdale Western Properties to Intset Investment Group, filed on August 17, 1976.
Source: Westsearch Resources Company

B-208

Partnership Grant Deed conveying Lots 21-28, 45-48, 54 55, 13, 36, 37, 61 and 62 of Tract 4671, Parcels B, C, D of L.A. No. 3036, Parcel C. of L.A. No. 3037, Parcel C. of L.A. No. 3208, Parcels A, C, and D of 3209, Parcel B of L.A. No. 3041 and Parcels A-N of L.A. No. 3138 from CC&F Willowdale Western Properties to Cadillac Fairview/California, Inc., filed on October 29, 1976.
Source: Westsearch Resources Company

B-209

Assignment of the Lessor's Interest in Leases to Cadillac Fairview/California, Inc. assigning interest in unrecorded leases affecting the property described in B-208 from CC&F - Willowdale Western Properties to Cadillac Fairview/California, Inc., a California corporation (formerly known as Willowdale Investments, Inc.), filed on October 29, 1976.
Source: Westsearch Resources Company

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Other deeds to Cadillac Fairview after October 28, 1976 conveyance

B-210	Grant of Easement grantings easement and right of way for underground natural gas, water, electrical and sewer systems and telephone, telegraph and communication systems in the southerly 17 feet of Lot 45 excepting the Southerly 7 feet from Golden Star Associates Ltd. to Cadillac Fairview/California Inc., filed on May 19, 1977. Source: Westsearch Resources Company
B-211	Corporation Grant Deed conveying Parcel A of LA No. 3041 and non-exclusive underground utility easement from Amoco Chemical Corporation, to Cadillac Fairview/California, Inc., filed on August 30, 1979. Source: Westsearch Resources Company
B-212	Grant Deed granting portions of Lots 24, 25 and 48 of Tract 4671 reserving easement for public street purposes and reserving oil, gas and mineral rights from The City of Los Angeles to Cadillac Fairview/California, Inc., filed on April 8, 1980. Source: Westsearch Resources Company
B-213	Corporation Grant Deed conveying a portion of Lot 13 of Tract No. 4671 including the portion of Rosemead Street adjacent to the Lot excepting the northerly 100 feet from Western Waste Industries, formerly known as WRH Industries to Cadillac Fairview/California Inc., filed on May 9, 1983.
B-214	Los Angeles County Tax Assessor printout providing a list of the current owners of the Site property.

Box 2 Contains Title Documents
1978 to present - not indexed.

AGREEMENT OF SETTLEMENT

AND SPECIFIC RELEASES

1. PARTIES: The parties to this Agreement of Settlement and Specific Releases ("Agreement") are Plaintiffs Amcena Properties, Inc. ("Amcena"), and BCI Coca-Cola Bottling Company of Los Angeles ("CCLA"), successor by merger to Coca-Cola Bottling Company of Los Angeles, and Defendants Shell Oil Company ("Shell"), The Dow Chemical Company ("Dow") and the United States of America ("United States"). Hereinafter, Shell, Dow and the United States are sometimes referred to collectively as the "Settling Defendants." Plaintiffs and the Settling Defendants are referred to in this Agreement collectively as the "Settling Parties."

DEFINITIONS

The following definitions shall apply in the construction of this Agreement.

A. "Contamination" means all foreign substances, including but not limited to trash, debris, waste, chemicals, liquids, oil, gasoline, waste oil, hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(14) and implementing regulations), hazardous materials as defined in § 25501(k)

of the California Health & Safety Code, and petroleum or any fraction thereof as used in CERCLA § 9601(14).

B. "Property" means the Property located at what is commonly known as 19875 Pacific Gateway Drive in Torrance, California and more particularly described as:

> "Parcel C, as shown on 'Parcel Map - LA No. 3041,' in the County of Los Angeles, State of California as filed in Book 61, at Pages 81 and 82 of Parcel Maps, in the Office of the County Recorder of said County."

C. "Surface Zone" means the first twelve (12) feet of soil (including air spaces and soil pore water) measured from the surface as of December 20, 1992, irrespective of the source. "Surface Zone Contamination" means Contamination found within the Surface Zone, and "Surface Zone Contamination Claims" means any claim of any kind arising out of Contamination of the Surface Zone. "Deep Zone Contamination" means Contamination within the soil (including air spaces and soil pore water) and groundwater at all levels beneath the Surface Zone.

RECITALS

1. Plaintiffs have filed claims now pending in Case No. CV-91-5436 WMB (JRx) in the United States District Court for the Central District of California ("Court") entitled Amcena Properties, Inc. et al. v. Shell Oil Company, et al. (the "Action"). The Action has been limited to soil contamination claims in accordance with Case Management Order No. 2, a copy of which is attached hereto. The Action was filed by Amcena and CCLA on October 7, 1991 to recover the expenses they had incurred in investigating and remediating soil contamination found at the Property. CCLA currently owns the Property and Amcena is the prior owner who sold the Property to CCLA. The remedial work previously done on the Property was done at the expense of both plaintiffs.

2. Plaintiffs filed claims in Case No. BC039196 in the Superior Court of the State of California for the County of Los Angeles entitled Amcena Properties, Inc. et al. v. Shell Oil Company, et al. (the "State Court Action") relating to, among other things, Contamination on the Property, which claims have been dismissed without prejudice subject to a tolling agreement entered into between the named parties in the State Court Action ("Tolling Agreement"); and

3. The Settling Parties have agreed to settle all disputes between them that are presently asserted in the Action

on the terms and conditions set forth below. This Settlement Agreement is intended to be binding upon each of the Settling Parties, their successors and assignees. The right, duties and obligations of each of the Settling Parties are expressly contingent on the execution of this Agreement by each of them.

4. The Settling Parties acknowledge that the characterization of the conditions on the site and development of the history of the site and neighboring properties may be incomplete. The Settling Parties have agreed to proceed with settlement and assume certain risks concerning discovered and undiscovered Surface Zone Contamination in Surface Zone soils on the Property which is the subject of this settlement. From Plaintiffs' perspective, those risks include but are not limited to the possibility that they are waiving for all times claims with respect to Contamination that they may not yet have discovered. As for Settling Defendants, those risks include but are not limited to the possibility that alternative sources of Surface Zone contamination may be discovered or that other defenses will become apparent with further investigation. Nevertheless, the Settling Parties intend by this Agreement to fully, finally and forever settle and release claims according to the terms of this Agreement, whether these claims now exist, may now exist, or may appear upon the discovery of additional facts.

Claims Reserved

5. Certain claims, disputes and controversies between the Settling Parties will not be settled by this Agreement and are expressly reserved for resolution in later and separate proceedings, if necessary. The Settling Parties now agree for the purposes of this Settlement that the Action and its resolution will encompass only Plaintiffs' claims for Surface Zone Contamination, and that claims for Deep Zone Contamination will be excluded and preserved for later resolution. Claims and rights pertaining only to Deep Zone Contamination will be reserved pending completion of the Remedial Investigation/Feasibility Study ("RI/FS") presently being conducted under an Administrative Order on Consent between the United States Environmental Protection Agency, Dow, Shell and the State of California. Surface Zone Contamination Claims will be dismissed with prejudice by Plaintiffs in exchange for payment of the settlement amount. Plaintiffs will execute releases in connection with the dismissed claims.

6. Dow and the United States have agreed to a dismissal of Dow's cross-claim against the United States without prejudice. They have agreed to enter into a mutual tolling arrangement with respect to any claims Dow may have against the United States or the United States may have against Dow with respect to sums paid pursuant to this Agreement of Settlement so that any such claims may be adjusted judicially

at a later date if they are unable after good faith efforts to resolve their dispute by settlement.

7. Since this settlement does not involve all parties to the Action, obtaining contribution and indemnity protection through judicial approval of this settlement is a condition of the Agreement. The Settling Parties have entered into this settlement in good faith after lengthy court-supervised negotiations. The Settling Parties believe the settlement amount is fair, reasonable and is consistent with the purposes of CERCLA, considering the costs and risks of litigation, and the relative merits and potential value of the claims.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and releases contained herein, the Settling Parties agree as follows:

1. Settlement Amount. The Settlement Amount for the Surface Zone Contamination Claims will be $425,000. The obligation to pay the Settlement Amount will be joint and several among the Settling Defendants, whose shares in the Settlement Amount will be determined by a separate Settlement Allocation Agreement among them. The allocation of shares as between Dow and the United States is subject to adjustment through a subsequent action for contribution and/or indemnity, as provided in paragraphs 6 and 7 below, but resolution of that

dispute will not affect the obligation to make payment according to the Settlement Allocation Agreement of the Settling Defendants at the time provided in this paragraph, and that resolution will not in any way modify or prejudice the rights of the Plaintiffs under this Agreement. The Settlement Agreement will be paid jointly to the Plaintiffs by the Settling Defendants within ninety 90 days following the date on which judicial approval of this settlement becomes final, as provided in paragraph 11 below.

2. The payment of the Settlement Amount will be payable to and delivered to Plaintiffs' counsel, Sheppard, Mullin, Richter & Hampton, 333 South Hope Street, 48th Floor, Los Angeles, California 90071. Tender of payment as provided in this paragraph will satisfy the obligation for payment of the Settling Defendants, who will have no responsibility to the individual Plaintiffs for the allocation of the Settlement Amount as between the Plaintiffs. All obligations incumbent upon the parties under this Agreement will be fully enforceable upon this tender.

3. Release and Reservation of Claims. In exchange for, and as a condition to, payment of the Settlement Amount, Plaintiffs Amcena and CCLA will give Shell, Dow and the United States their release of the Surface Zone Contamination Claims in the form attached to this Agreement as Appendix A. Amcena and CCLA will execute dismissals with prejudice of any claims

pending in the Action against the Settling Defendants, and in the State Action concerning the Surface Zone Contamination claims. Each party will bear its own costs. Concerning the requirements of this Agreement, Amcena and CCLA are deemed to act severally, not jointly.

4. As a condition for participation in the Settlement Amount, Shell agrees to provide Dow and Dow agrees to provide Shell, in the form attached to this Agreement as Appendix B, their mutual and limited release of any claims for contribution or indemnity with respect to the Action or the Settlement Amount paid under this settlement. In connection with payment of the Settlement Amount and the exchange of releases, Shell and Dow will dismiss with prejudice the third party claims and cross-claims raised against each other in the Action.

5. As a condition for participation in the Settlement Amount, Shell agrees to provide the United States and the United States agrees to provide Shell, in the form attached to this Agreement as Appendix C, their mutual and limited releases of any claims for contribution or indemnity with respect to the Action or the Settlement Amount paid under this settlement. In connection with payment of the Settlement Amount and the exchange of releases, Shell and the United States will dismiss with prejudice the third party claims and cross-claims raised against each other in the Action.

6. A dispute remains between the United States and Dow as to their relative shares of the Settlement Amount. While each will pay its respective share of the Settlement Amount as specified above in order to facilitate this settlement, and each believes that the Settlement Amount is a fair and reasonable amount to pay in order to resolve the Surface Zone Contamination Claims, a dispute exists as to whether Dow is entitled to be held harmless by the United States under the terms of the operating agreement for the former styrene plant or on the basis of equitable principles relating to rights and obligations existing in connection with that agreement. Each reserves the right as to the other to seek a reallocation and adjustment of its contribution to this settlement at a later date. Therefore, as a condition for participation in the Settlement Amount, Dow and the United States have agreed to a dismissal without prejudice of Dow's cross-claim against the United States. The United States agrees that this Agreement of Settlement does not bar Dow from pursuing an action against the United States at a later date for contribution under Section 113 of CERCLA or under any other available theory with respect to the amounts paid by Dow in connection with this settlement. Conversely, Dow agrees that this Agreement of Settlement does not bar the United States from pursuing an action against Dow at a later date for contribution under Section 113 of CERCLA or under any other available theory with respect to the amounts paid by the United States in connection with this settlement.

7. Tolling Agreement. The reservation of rights described in the previous paragraph will be subject to a tolling agreement with respect to the applicable statute of limitations. The United States agrees that the statute of limitations with respect to the claims preserved by Dow will be tolled and will not begin to run again until one year will have passed following the date on which judgment will become final in the action entitled Cadillac Fairview/California, Inc. v. Dow Chemical Co., United States District Court for the Central District of California Case No. 83-7996 MRP (Bx) and 83-8034 MRP (Bx), Consolidated. Conversely, Dow agrees that the statute of limitations with respect to the claims preserved by the United States will be tolled and will not begin to run again until one year will have passed following the date on which judgment will become final in the action entitled Cadillac Fairview/California, Inc. v. Dow Chemical Co., United States District Court for the Central District of California Case No. 83-7996 MRP (Bx) and 83-8034 MRP (Bx), Consolidated. The tolling period may be extended by further mutual agreement of the United States and Dow without further approval of the court or other parties in the Action.

8. The exclusion of Deep Zone Contamination claims is not an admission that the Settling Defendants, or any of them, are in any way responsible for Deep Zone Contamination on the Property. The legal burdens of proof with respect to the

source of that Contamination and the parties responsible will remain as they were prior to this settlement.

9. If CCLA intends to conduct soil testing for the purpose of attempting to establish the presence of Deep Zone Contamination, it will provide the Settling Defendants with not less than ten (10) days written notice. In the notice, CCLA will identify the location and type of testing to be conducted, and it will offer the Settling Defendants an opportunity to obtain split samples, at Settling Defendants' expense. Within ten (10) days after receipt of the test results, CCLA will provide the Settling Defendants, or the Settling Defendants will provide CCLA, as the case may be, with copies of those results.

10. Until such time as the Deep Zone Contamination claims are resolved, if CCLA intends to conduct any activities involving the release or storage of chemicals on or in the soil, including but not limited to the application or repair of asphalt, the spraying of insecticides or herbicides, or the placement of underground tanks, it will preserve information as to the location of the activity, the identification of the type and volume of chemicals placed or to be released or stored, the identity of any contractors involved in the work, and the nature of any permits obtained, and it will otherwise adhere to any and all applicable legal requirements.

11. Judicial Approval and Protection Against Contribution and Indemnity Claims of Non-Settling Defendants. Many of the Defendants and third-party Defendants in the Action have not contributed to this settlement. The Settling Defendants are only willing to proceed with this settlement if they will not be subject to further claims for contribution, indemnity, remedial or removal expenses, costs of litigation or otherwise in connection with the Action. This settlement is conditioned upon the Settling Defendants receiving from the court its approval of the settlement, including a declaration that the settlement is fair, reasonable and consistent with the purposes of CERCLA, and that all non-settling parties to the Action will therefore be barred from pursuing any action against the Settling Defendants for contribution or indemnity under the authority of Franklin v. Kaypro Corp., 884 F.2d 902 (9th Cir. 1989), United States v. Western Processing Co., 756 F. Supp. 1424 (W.D. Wa. 1990), and U.S. v. Montrose Chemical Corporation of California, 793 F. Supp. 237 (C.D. Cal. 1992). Should any court fail to approve this Agreement and provide the contribution and indemnity protection contemplated, this Agreement will be null and void and no party will incur any obligation whatsoever as a consequence of it.

12. Indemnification of Settling Defendants. As a further condition of settlement, CCLA agrees to indemnify, defend and hold harmless the Settling Defendants, their shareholders, board of directors, officers, and employees,

and successors of each of them, from and against any and all claims, expenses, remedial and removal costs, assessments and liability of every kind whatsoever arising out of:

12.1 Disposal by CCLA and/or its contractors of any soils or other materials from the Property to another site or facility for treatment or disposal; and

12.2 Contamination, if any, contained in materials deposited on the Property by CCLA or its contractors.

12.3 Any Contamination contributed, concentrated or dispersed on the Property by CCLA or its contractors and any incremental cost of remediation resulting from CCLA's construction over soils in the Surface Zone.

13. Each Plaintiff hereby warrants that no assignment, conveyance or sale of any of its respective claims (or any portion of them) has been made to any person or entity and that CCLA is the present owner of the Property. Each Plaintiff further agrees not to make any such assignment, conveyance or sale in the future of any claims asserted or which could have been asserted in the Action. Each Plaintiff also warrants that no subrogation of its claims (or any portion of them) has taken place.

14. It is intended that this settlement shall resolve all Surface Zone Contamination Claims which may be raised against the Settling Defendants as to the Property, not only with respect to the current and past owners and tenants, but also as to future owners and tenants. It is agreed that one purpose of this Agreement is to assure that similar claims for Surface Zone Contamination and new potential plaintiffs will not be created solely by the post-settlement transfer of rights and interests in the Property. Therefore, CCLA agrees, covenants, and warrants that prior to the sale, conveyance, gift, exchange, transfer, lease, hypothecation, or encumbrance of the Property in any offer, contract of sale, sales agreement, lease agreement, escrow agreement, loan agreement, deed, deed of trust, deed in lieu of foreclosure, or other instrument whereby any interest in the Property is to be transferred, leased or hypothecated, Plaintiffs shall provide to the transferee(s) of the interest, in addition to any disclosure required by law, the following Notice, Disclosure, and Acknowledgment of Release (hereinafter the "Notice"). The Notice must be delivered to the Transferee as a separate written document before the consummation of the transaction.

NOTICE, DISCLOSURE AND
ACKNOWLEDGMENT OF RELEASE

You are contemplating [purchase, lease or acquisition] of an interest in the property located at 19875 Pacific Gateway Drive, Torrance, California. This parcel of real property will be referred to as the "Property" in this Notice.

The Property is located on the site of a former chemical manufacturing complex which was claimed to

be a continuing nuisance and a potential hazard to health and safety. Allegations have been made that this and adjacent properties contain or have contained hazardous or toxic materials and that certain of these substances may have migrated onto or under the Property. Amcena Properties, Inc., and Coca Cola Bottling Company of Los Angeles ("the Former Owners") filed a lawsuit in the United States District Court for the Central District of California in October 1991 against numerous defendants claiming property damage and other injuries resulting from the toxic materials allegedly contained on the Property. The action was entitled Amcena Properties, Inc. v. Shell Oil Company, Case No. 91 5436 WMB (JRx). A settlement was reached in the lawsuit pursuant to which the Former Owners of the Property were paid consideration for a complete release of certain claims (defined as "Surface Zone Contamination Claims" under that settlement) which they asserted against certain defendants.

As a part of the settlement, the Former Owners agreed to provide you with this Notice as a condition precedent to any transfer of the Property. The Settling Defendants in the lawsuit, Shell Oil Company, The Dow Chemical Company, and the United States of America have required and are relying on the providing of this Notice and your acknowledgment of its receipt. These defendants are intended to be third party beneficiaries of this Notice.

By your signature on this Notice, you agree and acknowledge that you have informed yourself about the claims made and released under that settlement, that you have received a copy of the Settlement Agreement, and that you agree to be bound by the Settlement Agreement as a successor-in-interest to the Former Owners who have already been compensated for the Surface Zone Contamination Claims.

You also agree that prior to any sale, gift, exchange or transfer of the Property or any interest in the Property, and in any contract of sale, lease agreement, deed of trust, security agreement, escrow agreement or other similar type agreement or transfer document for the transfer of any interest in the Property, you shall provide this same Notice to the proposed transferee along with a copy of the Settlement Agreement and require that the Notice be executed as part of any such transaction. You also agree to assume the responsibility described in paragraph 16 of the Settlement Agreement to indemnify, defend and hold harmless the Settling

Defendants, and each of them, from any and all claims or actions arising out of or resulting from your failure to provide the Notice. The obligation to indemnify includes indemnification from all costs, including attorneys' and consultants' fees, incurred in or on account of a lawsuit or claim by any of your successors-in-interest in the Property or any interest in the Property.

_____
Signature(s) of Transferor(s)

_____
Signature(s) of Transferee(s)

15. No sale, conveyance, gift, exchange, lease, hypothecation, encumbrance, or other transfer of the Property will be effective unless or until the transferee(s) have executed the Notice. It is understood and acknowledged that these notice provisions are intended to insure that proposed transferees are fully informed of the allegations made by the Plaintiffs pertaining to the presence of hazardous materials on, under or near the Property.

16. CCLA agrees to indemnify, defend and hold harmless the Settling Defendants, and each of them, from any and all claims or actions specifically arising out of or directly attributable to its failure to provide the Notice as required by paragraph 14 above, including without limitation indemnification from all costs, including attorneys' and consultants' fees, incurred by any of the Settling Defendants by reason of those claims or actions or any settlement of them. It is agreed that timely providing the Notice referenced in

paragraph 14 shall be an absolute defense to any claims for indemnity against CCLA under this paragraph.

17. The requirement and obligation of CCLA and/or any transferee in providing the Notice may vary with any material change in circumstances, including in particular the status of remediation work on the Property. It is the intent of the Settling Parties that the Notice required by paragraph 14 should not extend beyond the time when it is reasonably necessary to protect the Settling Defendants against Surface Zone Contamination Claims by successors-in-interest to CCLA. Therefore, the Settling Defendants agree to consider and act in good faith upon any written request by CCLA to terminate the requirement to provide the Notice described in paragraph 14 when that necessity no longer exists. Consent to such request by the Settling Defendants shall not be untimely or unreasonably withheld.

18. Recording of Judgment of Dismissal. To assure compliance by subsequent owners with the requirements of paragraphs 14-16, the parties agree that any judgment of dismissal in this action shall contain the following statement:

> This judgment of dismissal results from a settlement of claims in an action entitled Amcena Properties, Inc. v. Shell Oil Company, Case No. 91 5436 WMB (JRx) in the United States District Court for the Central District of California. The settlement affects the real property commonly known as 19875 Pacific Gateway Drive, Torrance, California ("Property") and more specifically described as follows:

"Parcel C, as shown on 'Parcel Map - LA No. 3041,' in the County of Los Angeles, State of California as filed in Book 61, at Pages 81 and 82 of Parcel Maps, in the Office of the County Recorder of said County."

The settlement imposes certain requirements of notice by any party attempting to transfer an interest in the Property relating to obligations and releases of claims created by the settlement agreement affecting Amcena Properties, Inc., Coca-Cola Bottling Company of Los Angeles, Shell Oil Company, The Dow Chemical Company, and the United States of America, their shareholders, boards of directors, officers, employees and successors-in-interest. The settlement agreement requires each person acquiring an interest in the property to acknowledge that he has informed himself of the claims made and released under the settlement and to provide notice of the terms of the settlement to any proposed transferee along with a copy of the settlement agreement. The settlement agreement also requires that the notice be executed by the transferee as a condition precedent to the transaction.

The judgment of dismissal may be recorded by any party to this settlement in the records of the County Recorder for the County of Los Angeles pursuant to California Government Code Section 27326. CCLA agrees to provide any acknowledgment determined to be necessary under Government Code Sections 27282 through 27288, inclusive, to complete the recording.

19. Anti-Deficiency Act. Payments by or on behalf of the United States are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341. However, if the United States fails to contribute its share of the Settlement

Amount pursuant to the Settlement Allocation Agreement, either Dow or Shell may terminate this Agreement.

20. No Admissions Intended or Inferred. It is understood and agreed that this is a compromise settlement of disputed claims and that neither the Agreement nor any part of the releases will be deemed or construed to be an admission of the Settling Parties or any of them of liability or responsibility of any kind. The Settling Parties hereby acknowledge and agree that this Agreement is entered into in good faith and has no purposes other than to compromise, settle and extinguish the claims involved.

21. Settlement is Non-Precedential. This settlement has been negotiated among the Settling Parties according to circumstances which are unique to this case. Nothing in this settlement is intended to establish a precedent of any kind. No party will represent directly or indirectly to any court, special master, arbitrator, mediator or any hearing officer assigned to supervise settlement negotiations that the parties have agreed to any scheme of allocation in the Action that is applicable to or sets a pattern for any other matter. It is the intent of the Settling Parties that the covenant of this paragraph should be enforceable by injunction, and that in any action brought to enjoin violations of this paragraph, the prevailing party shall be entitled to an award of attorneys' fees.

22. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any provision, paragraph, sentence, clause or word of this Agreement is, for any reason, held to be invalid or unenforceable, such invalidity or unenforceability will not affect the remainder of this Agreement, and the Settling Parties agree to negotiate in good faith to replace the offending language with language which accomplishes as nearly as legally permissible the intent of the original.

23. The Settling Parties agree that each party and counsel for each party have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in an interpretation of this Agreement or any amendments, exhibits, or appendices thereto.

24. The mutual obligations and undertaking of the Settling Parties expressly set forth in this Agreement are the sole and only consideration of this Agreement. No representations, promises or inducements of any nature whatsoever have been made by any party to this Agreement other than as appear in this document.

25. Knowledge of Terms and Voluntary Consent. Each Settling Party by the undersigned hereby affirms and acknowledges that the undersigned has read the foregoing Agreement and

the releases contained in the exhibits to the Agreement and has had the same explained by its attorney(s), that the undersigned fully understands and appreciates the foregoing words and terms and their significance, that the undersigned is fully satisfied with the releases herein referred to, and that signatures affixed hereunder are given voluntarily and of the undersigned's own free will and accord.

25a. EPA Authority. The parties agree that this Agreement does not release, waive, limit or otherwise affect the delegated authority of the United Environmental Protection Agency ("EPA") under CERCLA in connection with the Property at issue in this Action and Agreement of Settlement, including any claims for response costs incurred or to be incurred by EPA with respect to that Property.

26. Execution by Counterparts. This Agreement may be executed in one or more counterparts. All counterparts will constitute one instrument binding on the signatories upon execution of one or more counterparts by all Settling Parties. Counsel for any party will be authorized to assemble a composite counterpart which shall consist of one copy of each page except the signature pages, together with multiple counterpart signatures pages executed on behalf of every party to this Agreement. The composite counterpart may then be used by any party for all purposes as the complete signed and executed Agreement among the parties.

27. Authority to Execute. Each individual executing this Agreement on behalf of a corporation, partnership, trust or other entity warrants that he or she is duly authorized to execute this Agreement on behalf of the corporation, partnership, trust or other entity in accordance with authority granted under the formation documents of the entity, all conditions to the exercise of that authority have been satisfied,

and that this Agreement is binding upon that entity in accordance with its terms.

28. Each of the parties to this Agreement hereby authorizes counsel for The Dow Chemical Company to insert the date in the space provided below as of the date the fully executed and acknowledged counterparts from all parties are delivered by the parties as of _____, 1993.

DATED: _____

By _____
MILES P. FISCHER, ESQUIRE
General Counsel for AMCENA PROPERTIES, INC.

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for AMCENA PROPERTIES, INC.

DATED: _____

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

By _____
LOWRY F. KLINE
General Counsel for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

///

///

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

DATED: _____

SHELL OIL COMPANY

By _____
MAX E. HOWORTH

DATED: _____

By _____
DAVID J. EARLE
Attorney for SHELL OIL COMPANY

DATED: _____

THE DOW CHEMICAL COMPANY

By _____
JOHN E. DICKS

DATED: _____

HARDIN, COOK, LOPER, ENGEL & BERGEZ

By _____
STEPHEN McKAE
Attorneys for THE DOW CHEMICAL COMPANY

///

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

DATED: _____

SHELL OIL COMPANY

By _____
MAX E. HOWORTH

DATED: 30 April 1993

By _____
DAVID J. EARLE
Attorney for SHELL OIL COMPANY

DATED: _____

THE DOW CHEMICAL COMPANY

By _____
JOHN E. DICKS

DATED: _____

HARDIN, COOK, LOPER, ENGEL & BERGEZ

By _____
STEPHEN McKAE
Attorneys for THE DOW CHEMICAL COMPANY

///

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

DATED: _____

SHELL OIL COMPANY

By _____
MAX E. HOWORTH

DATED: _____

By _____
DAVID J. EARLE
Attorney for SHELL OIL COMPANY

DATED: MARCH 18, 1993

THE DOW CHEMICAL COMPANY

By _____
JOHN E. DICKS
ITS ATTORNEY

DATED: May 27, 1993

HARDIN, COOK, LOPER, ENGEL & BERGEZ

By _____
STEPHEN McKAE
Attorneys for THE DOW CHEMICAL COMPANY

///

DATED: 5.1.93

THE UNITED STATES OF AMERICA

By _____
DAVID DANA
Environmental Defense Section
Environmental and Natural
Resources Division
U.S. DEPARTMENT OF JUSTICE

ROY G. WUCHITECH, ESQUIRE
STEPHEN J. O'NEIL, ESQUIRE
SHEPPARD, MULLIN, RICHTER & HAMPTON
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Telephone: (213) 620-1780

Attorneys for Plaintiffs
AMCENA PROPERTIES, INC. and COCA-COLA
BOTTLING COMPANY OF LOS ANGELES

[See next page for names of additional counsel.]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMCENA PROPERTIES, INC., a California corporation; COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation, Plaintiffs, v. SHELL OIL COMPANY, a Delaware corporation; SHELL CHEMICAL COMPANY, a Delaware corporation; CC&F WESTERN DEVELOPMENT CO., INC., a California corporation; INTERNATIONAL PROPERTY DEVELOPMENT CO., a California corporation; CC&F WESTERN PROPERTIES, INC., a California corporation; WILLOWDALE INVESTMENTS, INC., a California corporation; CADILLAC FAIRVIEW/CALIFORNIA, INC., a California corporation; CC&F AND WILLOWDALE WESTERN PROPERTIES, a California general partnership; INTSET INVESTMENT GROUP, a partnership; INTERNATIONALE SET, INC., a California corporation; and the UNITED STATES OF AMERICA, Defendants. AND RELATED CROSS AND COUNTER-ACTIONS.	Case No. 91-5436 WMB (JRx) STIPULATION AND ORDER RE CASE MANAGEMENT (NO. 2) Status Conference Date: July 22, 1992 Time: 4:30 p.m. Place: Courtroom 9 of Judge Byrne

DAVID J. EARLE, ESQUIRE
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Universal City, California 91608
Telephone: (818) 753-2500
Attorneys for Defendant, Third-Party
Complainant, and Counter-Defendant
SHELL OIL COMPANY

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and Cross-Defendant
CADILLAC FAIRVIEW/CALIFORNIA, INC.

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UNITED STATES OF AMERICA

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Telephone: (510) 444-3131
Attorneys for Third-Party Defendant
THE DOW CHEMICAL COMPANY

WHEREAS, in July, 1991, the U.S. Environmental Protection Agency ("EPA") proposed that the Del Amo Proposed Superfund Site (the "Del Amo Plant Site") that may include the property currently owned by plaintiff, Coca-Cola Bottling Company of Los Angeles ("CCLA") be added to the EPA's National Priorities List, a list of national priorities of areas containing known or threatened areas of releases of hazardous substances, pollutants and contaminants;

WHEREAS, in May, 1992, the EPA signed an administrative order on consent with defendant Shell Oil Company ("Shell") and third-party defendant The Dow Chemical Company ("Dow") whereby Shell and Dow agreed to investigate contamination at the Del Amo Plant Site;

WHEREAS, the administrative order on consent requires completion of a final report of the remedial investigation within twenty-eight (28) months;

WHEREAS, an action was previously filed in the Central District of California styled Cadillac Fairview/California v. Dow Chemical, et al., Consolidated Case Nos. CV 83-7996-MRP(Bx) and CV 83-8034-MRP(Bx), ("Cadillac Fairview") regarding that Del Amo pit site in which much of the discovery taken or to be taken may be relevant to, or reasonably likely to lead to the discovery of admissible evidence in, this action;

WHEREAS, third-party defendant Montrose Chemical Corporation of California is itself the subject of a Superfund action brought by the United States Environmental Protection Agency concerning Montrose's site in the City of Torrance;

The parties hereto agree that it is in their mutual interests as well as in the interests of judicial economy to coordinate discovery and promote the efficient and orderly conduct of this action. The parties accordingly hereby agree and stipulate as follows:

A. The parties agree that to the maximum extent feasible, all discovery taken in this case will be coordinated with discovery taken in Cadillac Fairview. Provided, however, that nothing contained in this stipulation shall preclude any party to either case from taking discovery. Furthermore, the parties to this action shall not be barred from deposing witnesses previously deposed in Cadillac Fairview. All discovery taken in Cadillac Fairview may be used against the parties to this Stipulaiton as if taken in this case subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure. Nothing contained in this Stipulation shall prohibit properly noticed discovery in this action from being used by or against any party to this action, or as otherwise provided by law. To further achieve coordination, the parties agree to adopt the following procedures:

1. Defendant Shell will promptly notify all parties in this case who are not parties to Cadillac Fairview of any

deposition noticed in Cadillac Fairview. The parties in Cadillac Fairview who are also parties to this case will use their best efforts to coordinate discovery with all parties in this case. Parties to this case will likewise use their best efforts to coordinate discovery with parties in Cadillac Fairview. All deposition notices issued in this case will be timely served by the noticing party on the parties to Cadillac Fairview as well;

2. Receipt of timely notice of a deposition to be taken in Cadillac Fairview will be treated as notice of the deposition of the same person for purposes of this action. The testimony so taken shall be usable in either case to the fullest extent provided for in the Federal Rules of Civil Procedure and the Federal Rules of Evidence; and

3. Each party shall bear the expense of its own transcript.

B. Privilege review. Before production, counsel for each party, or persons acting under their direct supervision, shall examine the files containing documents to be produced and shall screen all documents for privilege, including the attorney-client privilege, the work product doctrine and, for defendant United States, deliberative process. Such examination shall be performed with diligence and with due regard to the likelihood that the relevant files contain privileged or work product documents, the

resources then available to the reviewing party and the other party's desire for avoidance of undue delay.

C. Privilege log. A party responding to a document request shall prepare a log of documents withheld based on a claim of privilege. The log shall contain information necessary to demonstrate the basis for the claim of privilege, including, to the extent known, the date, title, author(s), subject matter and all recipients of the document, and shall be provided to counsel seeking such documents.

D. Retrieval of privileged documents after production.

1. Method of retrieval: So long as a party has performed a privilege review and has produced a privilege log in accordance with the provisions of paragraphs B and C above, the producing party may request the other parties to return any privileged document inadvertently produced with non-privileged documents. Such request may be made at any time within six (6) months after the production of the documents. If the assertion of privilege or work product is not made within the time provided, that claim shall be deemed waived. If the party who received the privileged documents does not agree with the assertion of the privilege, it shall so notify the producing party within thirty (30) days after receipt of the claim of privilege. The producing party may, after meeting and conferring with the receiving party as required by Local Rule 7.15.1, move for a determination of

that claim. If the producing party fails to make such a motion within thirty (30) days after receiving the receiving party's notice of disagreement with the assertion, the claim of privilege shall be deemed waived.

2. Limitation on use of privileged documents: Once a document has been identified as privileged in accordance with subparagraph (1) above, no party shall in any way copy, reproduce, refer to, quote, cite, rely upon or otherwise use in any manner any such document or its privileged contents in any proceeding, unless and until this Court determines that the document is not protected from discovery or the producing party withdraws the claim of privilege. Any such restrictions do not apply to the United States outside this litigation where the United States had independently obtained the documents.

3. Return of privileged documents: If the claim of privilege is upheld by the Court or if the receiving party agrees with the claim, all copies of the privileged documents shall be returned to the producing party. To the extent that notes concerning such documents exist, they shall be destroyed, except to the extent otherwise prohibited by law. The destroying party shall then certify in writing to counsel for the producing party that such notes either do not exist or have been destroyed. The certification shall identify with reasonable specificity the times and places of such

destruction and the persons having personal responsibility therefore and knowledge thereof. Any such restrictions do not apply to the United States outside this litigation where the United States had independently obtained the documents.

Dated: July 22, 1992

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for Plaintiffs
AMCENA PROPERTIES, INC. and
COCA-COLA BOTTLING COMPANY
OF LOS ANGELES

SHELL OIL COMPANY

By _____
DAVID J. EARLE
Attorneys for Defendant,
Third-Party Complainant, and
Counter-Defendant
SHELL OIL COMPANY
[Signature Per Telephonic Authority]

ARNOLD & PORTER

By _____
ALBERT M. COHEN
Attorneys for Defendant,
Counter-Defendant, and Cross-Defendant
CADILLAC FAIRVIEW/CALIFORNIA, INC.
[Signature Per Telephonic Authority]

UNITED STATES DEPARTMENT OF JUSTICE

By James Rubin/M
JAMES W. RUBIN
Attorneys for Defendant and
Cross-Defendant
UNITED STATES OF AMERICA
[Signature Per Telephonic Authority]

HARDIN, COOK, LOPER, ENGEL & BERGEZ

By Stephen McKae/M
STEPHEN McKAE
Attorneys for Third-Party Defendant
THE DOW CHEMICAL COMPANY
[Signature Per Telephonic Authority]

ORDER

IT IS SO ORDERED, this _____ day of July, 1992.

THE HONORABLE WILLIAM M. BYRNE, JR.
United States District Judge

APPENDIX A

RELEASE

This Release is entered into by Plaintiffs, as defined below, and the Settling Defendants, as defined below, as of the date of execution of this Release by all parties to it.

I. Definitions. For the purposes of this Release, the following terms shall have the following meanings:

a. "Plaintiffs" refers to Amcena Properties, Inc. ("Amcena"), a California corporation, and BCI Coca-Cola Bottling Company of Los Angeles ("CCLA"), a successor by merger to Coca-Cola Bottling Company of Los Angeles, and their subsidiaries, and to their shareholders, boards of directors, officers, employees and agents. References to the shareholders, directors, officers, employees and agents are to the individuals who have served in such capacities with each corporation from the creation of it through the date of this Release and to any joint ventures, partnerships, sole proprietorships, or corporations of which either is a successor.

b. "Settling Defendants" refers to Shell Oil Company, a Delaware corporation ("Shell") and The Dow Chemical Company ("Dow"), a Delaware corporation, and their subsidiaries, and to their shareholders, board of

directors, officers, and employees. It also refers to the United States of America ("United States"), its agencies and instrumentalities, and to its officials and employees. References to shareholders, directors, officers, officials and employees are to the individuals who have served in such capacities with each corporation or other entity from April 22, 1942 through the date of this Release. References to the entities shall also include all prior joint ventures, partnerships, or corporations of which each corporation is a successor. References to the instrumentalities and agencies of the United States include but are not limited to the Reconstruction Finance Corporation, the Defense Plant Corporation, the Rubber Reserve Company, the General Services Administration and their successors in interest.

c. The "Action" refers to Amcena Properties, Inc. v. Shell Oil Company, United States District Court for the Central District of California, Case No. 91 5436 WMB (JRx), including all counterclaims, cross-claims and third-party claims.

d. The "Property" refers to the real property located at what is commonly known as 19875 Pacific Gateway Drive, Torrance, California and more particularly described in the Agreement.

e. The "Agreement" refers to the Agreement of Settlement and Releases executed by Plaintiffs and the Settling Defendants. The terms defined in the Agreement are hereby expressly incorporated by reference.

II. a. Plaintiffs, and each of them, jointly and severally, hereby release and forever discharge Settling Defendants, their stockholders, affiliates, divisions, subsidiaries, principals, predecessors, successors, assigns, agents, directors, officers, partners, employees, insurers, indemnitors, representatives, lawyers and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of actions, causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent, related to the Action, Surface Zone Contamination claims in the State Court Action, or Surface Zone Contamination on the Property. This Release applies to all claims for the remediation of Surface Zone Contamination on the Property which have been incurred or which may be incurred in the future, whether or not such Surface Zone Contamination originated on the Property or from an off-Property location. It also relates to:

(1) Claims for attorneys' fees or other costs incurred in or related to the Action or the State Court Action;

(2) Any and all claims for past, present or future injury or damages to or loss to the Property, including, but not limited to, damage to any structure, improvement or land associated with the Property, to the extent the injury or damages derive from or are caused by Surface Zone Contamination;

(3) Any and all claims for past, present, or future loss of market and/or rental value of the Property to the extent the injury or damages derive from or are caused by Surface Zone Contamination;

(4) Any and all claims for injury or damage to or loss of Plaintiffs' personal property to the extent the injury or damages derive from or are caused by Surface Zone Contamination;

(5) Any and all claims by Settling Plaintiffs for injury or damage to property (both real and personal) which may hereafter arise by reason of any temporary and/or permanent actions taken by any person and/or entity, including any governmental entity, to stabilize, remove, encapsulate, "clean up," or otherwise remedy contamination by hazardous or toxic

materials at or adjacent to the Property, to the extent the injury or damages derive from or are caused by Surface Zone Contamination;

b. The release does not apply to:

(1) Claims for or based upon past, present or future injury, illness, disease, condition or death experienced by any employee, visitor, contractor or customer and caused or in any way contributed to by any past, present or future exposure to anything in, above, around, under or emanating from the Property or any adjacent properties previously owned or operated by the Settling Defendants, to the extent the injury, illness, disease, condition or death are caused by Surface Zone Contamination, whether or not such injury, illness, disease, condition or death has manifested itself as of the date of this Release; or

(2) Claims for or based upon past, present or future emotional distress, anxiety, pain and suffering, worry, fear or concern of any nature experienced by any employee, visitor, contractor or customer and caused or in any way contributed to by any past, present or future exposure to anything in, above, around, under or emanating from the Property or any adjacent properties previously owned or operated by the Settling Defendants, to the extent that the

emotional distress, anxiety, pain and suffering, worry, fear or concern are caused by Surface Zone Contamination, whether or not such emotional distress, anxiety, pain and suffering, worry, fear or concern has manifested itself as of the date of this Release.

However, in the event claims of the kind described in the preceding two paragraphs arise in the future, Plaintiffs agree that they will not raise against the Settling Defendants any defense, lien right or offset arising under the applicable workers compensation laws.

c. Plaintiffs are aware that they or their attorneys may hereafter discover facts different from or in addition to the facts of which they or their attorneys are now aware with respect to the subject matter of this Release. Plaintiffs have been advised as to the meaning and effect of, and they understand, Section 1542 of the California Civil Code ("Section 1542"), which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Plaintiffs waive and relinquish all rights and benefits they have or may have under Section 1542 against the Settling Defendants, except for claims relating to the remediation of Deep Zone Contamination.

III. Enforcement of Release. If any party to this Release brings an action to enforce its rights hereunder, the prevailing party shall be entitled to recover its costs and expenses, including court costs and reasonable attorneys' fees incurred in connection with such suit.

IV. Third Parties. Nothing in this Release is intended to or shall create any rights or remedies in any person not a party hereto. The release of claims contained in this document expressly excludes Deep Zone Contamination claims, as that term is defined and explained in the Agreement.

V. Covenants and Conditions of Settlement Agreement Preserved. It is understood and agreed that the covenants and conditions of the Agreement will survive the execution of this Release, notwithstanding anything to the contrary stated in this document.

VI. Construction. This Release shall be governed by and construed in accordance with the laws of the State of California. If any provision, paragraph, sentence, clause or word of this Release is, for any reason, held to be invalid or unenforceable, such invalidity or unenforceability will not

affect the remainder of this Release, and the Settling Parties agree to negotiate in good faith to replace the offending language with language which accomplishes as nearly as legally permissible the intent of the original.

The parties acknowledge that each party and counsel for each party have reviewed this Release and they agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in an interpretation of this Release or any amendments or exhibits thereto.

VII. Knowledge of Terms and Voluntary Consent. Plaintiffs, by the undersigned, hereby affirm and acknowledge that the undersigned have read the foregoing Release and have had the same explained by his attorney(s), that the undersigned fully understand and appreciate the foregoing words and terms and their significance, that the undersigned are fully satisfied with the settlement expressed by the Settlement Agreement and this Release, and that the signatures affixed hereunder are given voluntarily and of the undersigneds' own free will and accord.

DATED: _____

By Miles P. Fischer
MILES P. FISCHER, ESQUIRE
General Counsel for
AMCENA PROPERTIES, INC.

As the attorney for Amcena Properties, Inc., herein, I hereby represent and declare that I have fully explained the contents and legal effects of this Release to Miles P. Fischer, Esquire, General Counsel for Amcena Properties, Inc., who acknowledged a full understanding of the same, and I advise that it be signed.

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By _____
ROY G. WUCHITECH
Attorneys for AMCENA PROPERTIES, INC.

DATED: _____

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

By _____
LOWRY F. KLINE
General Counsel for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

As the attorney for BCI Coca-Cola Bottling Company of Los Angeles herein, I hereby represent and declare that I have fully explained the contents and legal effects of this Release to Lowry F. Kline, General Counsel for BCI Coca-Cola Bottling

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Company of Los Angeles, who acknowledged a full understanding of the same, and I advise that it be signed.

DATED: _____

SHEPPARD, MULLIN, RICHTER & HAMPTON

By Ray Wuchitech
ROY G. WUCHITECH
Attorneys for BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

APPENDIX B

MUTUAL AND LIMITED RELEASE

This Mutual and Limited Release is entered into by Shell Oil Company, a Delaware corporation, and The Dow Chemical Company, a Delaware corporation as of the date of execution of this Release by all parties to it.

I. Definitions. For the purposes of this Mutual and Limited Release, the following terms shall have the following meanings:

(a) "Plaintiffs" refers to Amcena Properties, Inc., ("Amcena") a California corporation, and BCI Coca-Cola Bottling Company of Los Angeles ("CCLA"), a Delaware corporation, and their subsidiaries, and to their shareholders, boards of directors, officers, and employees. References to shareholders, directors, officers, officials and employees are to the individuals who have served in such capacities with each corporation from April 22, 1942 through the date of this Mutual and Limited Release and to any joint ventures, partnerships, sole proprietorships, or corporations of which either is a successor.

(b) "Shell" refers to Shell Oil Company, a Delaware corporation, and its subsidiaries, and to its shareholders, board of directors, officers, and employees. References to shareholders, directors, officers and employees are to the individuals who have served in such capacities with the corporation from its creation through the date of this Mutual and Limited Release. References to the entities shall also include all prior joint ventures, partnerships, or corporations of which the corporation is a successor.

(c) "Dow" refers to The Dow Chemical Company, a Delaware corporation, and its subsidiaries, and to its shareholders, board of directors, officers, and employees. References to shareholders, directors, officers and employees are

to the individuals who have served in such capacities with the corporation from April 22, 1942 through the date of this Mutual and Limited Release. References to the entities shall also include all prior joint ventures, partnerships, or corporations of which the corporation is a successor.

(d) "Settling Defendants" refers to Shell, Dow and the United States of America.

(e) The "Present Litigation" refers to the following action: Amcena Properties, Inc. v. Shell Oil Company, United States District Court for the Central District of California Case No. 91 5436 WMB (JRx), including all counterclaims, cross-claims and third-party claims.

(f) The "Property" refers to the real property at 19875 Pacific Gateway Drive, Torrance, California and more particularly described in the Settlement Agreement.

(g) The "Settlement Agreement" refers to the Settlement Agreement executed by Amcena Properties, Inc., BCI Coca-Cola Bottling Company of Los Angeles and the Settling Defendants, dated _____, 1993.

1. Consideration. In consideration for entering into the Settlement Agreement and the further consideration described therein, Shell and Dow agree to release certain claims as set forth below.

2. Mutual and Limited Release. Shell as the first party and Dow as the second party each do hereby release the other party, its successors and assignees from any and all claims and demands for contribution or indemnity with respect to the Present Litigation and the Settlement Amount paid pursuant to the Settlement Agreement.

3. Unknown Claims. Shell and Dow understand and agree that this release does not cover or include any claim other than claims with respect to the allocation of the Settlement Amount to

which they have agreed under the Settlement Agreement. Specifically, any claims relating to indemnity or contribution with respect to future claims for injury or damage of any third party or in connection with the order of any public agency concerning the need to stabilize, remove, encapsulate, "clean up," or otherwise provide a remedy for the presence of hazardous or toxic substances on or adjacent to the Property are preserved as between Shell and Dow. There is no waiver, express or implied, of Section 1542 of the California Civil Code.

4. Covenants and Conditions of Settlement Agreement Preserved. It is understood and agreed that the covenants and conditions of the Settlement Agreement will survive the execution of this Mutual and Limited Release, notwithstanding anything to the contrary stated in this document.

5. General. This Mutual and Limited Release shall be governed by and construed in accordance with the laws of the State of California. If any provision, paragraph, sentence, clause or word of this Mutual and Limited Release shall, for any reason, be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Mutual and Limited Release and the parties agree to negotiate in good faith to replace the offending language with language which accomplishes as nearly as legally permissible the intent of the original.

The parties acknowledge that each party and counsel for each party have reviewed this Mutual and Limited Release and they agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in an interpretation of this Mutual and Limited Release or any amendments or exhibits thereto.

Each party, by the undersigned, hereby affirms and acknowledges that the undersigned have read the foregoing Mutual

and Limited Release and have had the same explained by their attorney(s), that the undersigned fully understand and appreciate the foregoing words and terms and their significance, that the undersigned are fully satisfied with the settlement expressed by the Settlement Agreement and this Mutual and Limited Release, and that the signatures affixed hereunder are given voluntarily and of the undersigneds' own free will and accord.

DATED: _____

SHELL OIL COMPANY

By _____
MAX E. HOWORTH

As the attorney for Shell Oil Company herein, I hereby represent and declare that I have fully explained the contents and legal effects of this Mutual and Limited Release to Max E. Howorth of Shell Oil Company who acknowledged a full understanding of the same, and I advise that it be signed.

DATED: 30 April 1993

By _____
DAVID J. EARLE
Attorney for SHELL OIL COMPANY

DATED: _____

THE DOW CHEMICAL COMPANY

By _____
JOHN E. DICKS

and Limited Release and have had the same explained by their attorney(s), that the undersigned fully understand and appreciate the foregoing words and terms and their significance, that the undersigned are fully satisfied with the settlement expressed by the Settlement Agreement and this Mutual and Limited Release, and that the signatures affixed hereunder are given voluntarily and of the undersigneds' own free will and accord.

DATED: _____

SHELL OIL COMPANY

By_____
MAX E. HOWORTH

As the attorney for Shell Oil Company herein, I hereby represent and declare that I have fully explained the contents and legal effects of this Mutual and Limited Release to Max E. Howorth of Shell Oil Company who acknowledged a full understanding of the same, and I advise that it be signed.

DATED: _____

By_____
DAVID J. EARLE
Attorney for SHELL OIL COMPANY

DATED: MARCH 18, 1993

THE DOW CHEMICAL COMPANY

By John E. Dicks
JOHN E. DICKS
ITS ATTORNEY

As the attorney for The Dow Chemical Company herein, I hereby represent and declare that I have fully explained the contents and legal effects of this Mutual and Limited Release to John E. Dicks of the same, and I advise that it be signed.

DATED: July 30, 1992

HARDIN, COOK, LOPER, ENGEL & BERGEZ

By _____
STEPHEN McKAE
Attorneys for THE DOW CHEMICAL COMPANY

COMMONWEALTH LAND TITLE COMPANY

LOS ANGELES COUNTY

PRELIMINARY REPORT

- Shea and Gould
- 1800 Avenue of the Stars
- Los Angeles, California 90067
ATTN: Dan Herscher

20750 Ventura Blvd., #350
Woodland Hills, CA 91364
(818) 888-7655

YOUR NO.: AMCENA PROPERTIES
OUR NO. 86-33747-20

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE, COMMONWEALTH LAND TITLE COMPANY HEREBY REPORTS THAT IT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE DESCRIBING THE LAND AND THE ESTATE OR INTEREST THEREIN HEREINAFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION BELOW OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF SAID POLICY FORMS.

THE PRINTED EXCEPTIONS AND EXCLUSIONS FROM THE COVERAGE OF SAID POLICY OR POLICIES ARE SET FORTH IN EXHIBIT A ATTACHED. COPIES OF THE POLICY FORMS SHOULD BE READ. THEY ARE AVAILABLE FROM THE OFFICE WHICH ISSUED THIS REPORT.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

DATED: December 28, 1987, AT 7:30 A.M.

Bill Cuddyer
TITLE OFFICER

cc:

SCHEDULE A

THE FORM OF POLICY OF TITLE INSURANCE CONTEMPLATED BY THIS REPORT IS:

A CLTA Owners Policy

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

a fee

TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

AMCENA PROPERTIES, INC.

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situated in the City of Los Angeles, County of Los Angeles, State of California said property being more particularly described as Parcel C as said Parcel is shown on that certain map entitled "Parcel Map - L.A. No. 3041", filed in Book 61 of Parcel Maps at Pages 81 and 82, Official Records of said County.

SCHEDULE B

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE, IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. General and special taxes, including any personal property taxes, and assessments collected with taxes for the fiscal year 1987-1988:

Total:	$55,617.19	
First Installment:	27,808.60	Delinquent
Penalty:	2,780.86	
Second Installment:	27,808.59	Open
Penalty and Costs:	2,790.85	
Code:	510	
Parcel:	7351-34-57	

1a. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. A Covenant and Agreement, executed by CC&F Western Development Company, Inc., in favor of the City of Los Angeles, and recorded January 24, 1975 as Instrument No. 2983 in Book M-4902 Page 374, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

Said first party covenants and agrees to and with said City of Los Angeles to submit four copies of a plot plan over that above described property to the Fire Department for approval and review, prior to the issuance of building permits.

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect unless otherwide released by authority of the Fire Department of the City of Los Angeles.

3. A Covenant and Agreement, executed by CC&F Western Development Company, Inc., in favor of the City of Los Angeles, and recorded January 24, 1975 as Instrument No. 2984 in Book M-84902 Page 367, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

Said first party covenants and agrees to and with said City of Los Angeles to sumbit four copies of a parking area and driveway plan over the above

described property to the appropriate district office of the Bureau of Engineering for approval and for coordination and review of the Traffic Department and the Department of Building and Safety, prior to the issuance of building permits.

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect unless otherwise released by authority of the Bureau of Engineering of the City of Los Angeles.

4. Covenants, conditions and restrictions (deleting therefrom any restrictions based on race, color or creed), as provided in a document recorded March 28, 1975 as Instrument No. 3857, Official Records.

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value.

Said covenants, conditions and restrictions were purportedly modified by an instrument recorded September 26, 1975 as Instrument No. 684, in Book M-5124 Page 766; September 26, 1975 as Instrument No. 690 in Book M-5124 Page 813, Official Records; June 14, 1977 as Instrument No. 77-621940, Official Records and June 14, 1977 as Instrument No. 77-621943, Official Records.

5. A Covenant and Agreement, executed by C.C & F. Western Development Co., Inc., in favor of the City of Los Angeles, and recorded September 23, 1975 as Instrument No. 3724 in Book M-5121 Page 343, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

In consideration of the issuance by the City of Los Angeles of a Building permit for the construction of an oversized building of said property, we do hereby covenant and agree to and with said City, pursuant to Section 91.0506 (K) of the Los Angeles Municipal Code, to maintian on said property, a yard of 60 feet in width, unobstructed from ground to sky, as shown on the attached plot plan.

This covenant and agreement shall run with the land and shall be binding upon ourselves, any future owners encumbrancers, their successors, heirs or assignees and shall continue in effect so long as said oversized building shall remain thereon and unless otherwise released by authority of the Superintendent of Building of the City of Los Angeles.

6. An easement for railroad, transportation and community purposes and incidental purposes in favor of Southern Pacific Transportation Company, a Delaware corporation, as provided in a document recorded March 2, 1976 as Instrument No. 561, Official Records.

Affects: that portion of said land described as follows:

That certain real property situated in the City of Los Angeles, County of Los Angeles, State of California said property being that portion of the following described strip of land which lies within Lot 1 as said Lot is shown on that certain map entitled "Tract No. 32036" recorded in Book 851 Pages 12, 13 and 14, Official Records of said County, being more particularly described as a strip of land 25 feet in width lying 10 feet Westerly and 15 feet Easterly of the portion of the following described line which lies within said Lot 1.

Beginning at the point of intersection of the Northerly line of said Lot 1 with a line parallel with and perpendicularly distant 15.00 feet Easterly of the Westerly line of said Lots 1 and 6; thence from said point of beginning Southerly along said parallel line South 0° 04' 36" East 335.00 feet to the true point of beginning of the property herein described:

Thence from said true point of beginning and continuing on said parallel line South 0° 04' 36" East 1932.76 feet; thence tangent to the preceding course in the arc of a curve to the left having a radius of 385.24 feet a central angle of 8° 57' 55" an arc distance of 60.28 feet; thence non-tangent to the preceding curve South 10° 59' 47" East 87.96 feet; thence non-tangent to the preceding course from a tangent which bears South 9° 02' 31" East Southerly on the arc of a curve to the right having a radius of 338.27 feet and a central angle of 13° 38' 41" an arc length of 8056 feet to the Southerly line of said Lot 6; thence continuing on said 338.27 foot radius curve through a central angle of 78° 54' 46" an arc length of 465.89 feet; thence tangent to the preceding curve South 83° 30' 56" West 50.00 feet to an intersection with a line parallel with and perpendicularly distant 15.00 feet Northerly of the Southerly line of Lot 12 as said Southerly line is shown on that certain map entitled Tract No. 4671 recorded in Book 56 at Pages 30 and 31, Official Records of said County; thence Westerly along said parallel line South 89° 52' 56" West 48.00 feet; thence tangent to the preceding course on the arc of a curve to the right having a radius of 338.27 feet a central angle of 52° 52' 48" an arc distance of 312.20 feet to the Westerly line of said Lot 12, said property being contiguous at its Southerly terminus of the Northerly line of said Lot 6.

NOTE: That portion of the above described line which lies Northerly of the Southerly terminus of the course South 10° 59' 47" East 87.96 feet is not necessarily centerline of the proposed tract.

7. An easement for railroad, trasnportation, communication etc. and incidental purposes in favor of C C & F Willowdale Western Properties, as provided in a document recorded August 17, 1976 as Instrument No. 60, Official Records.

Affects: as described therein

8. An easement for railroad drill track, spur track, transportation, communication, storm drainage and related purposes and incidental purposes in

favor of Amoco Chemicals Corporation, a Delaware corporation, as provided in a document recorded August 30, 1979 as Instrument No. 79-965941, Official Records.

Affects: a strip of land 30 feet in width lying 15 feet on the West side and 15 feet on the East side of the following described line which lies within said Parcel A, 30 feet in width lying 15 feet on each side of the following described line which lies within said 100 foot right-of-way and 25 feet in width lying 10 feet to the right of and 15 feet to the left, in the direction of traverse, of said following described line which lies within said Parcel B, said Parcel C and said Lot 6 and 30 feet in width lying 15 feet on each side of the Easterly 460.03 feet of that portion of said following described line which lies within said Lot 12 and said Lot 13 and lying 15 feet right and 11 feet left in the direction of traverse of the Westerly 293.04 feet of said following described line which lies within the above-mentioned Lot 12 and Lot 13; said line being more particularly described as follows:

Beginning at the point of intersection of the Northerly line of said Parcel A of said Parcel Map L.A. No. 3041, with a line parallel with and perpendicularly distant 15.00 feet Easterly of the Westerly line of said Parcel A, said Parcel B of said Parcel Map L.A. No. 3463, said Parcel C of said Parcel Map L.A. No. 3041 and said Lot 6 of said Tract No. 32036; thence from said Point of Beginning Southerly along said parallel line South 0° 04' 36" East 2267.76 feet; thence tangent to the preceding course on the arc of a curve to the left having a radius of 385.24 feet a central angle of 8° 57' 55" an arc distance of 60.28 feet; thence non-tangent to the preceding course South 10° 59' 47" East 87.96 feet; thence non-tangent to the preceding course from a tangent which bears South 0° 02' 31" East Southerly on the arc of a curve to the right having a radius of 338.27 feet a central angle of 92° 33' 27" an arc distance of 546.45 feet; thence tangent to the preceding curve South 83° 30' 56" West 50.00 feet to an intersection with a line parallel with and perpendicularly distant 15.00 feet Northerly of the Southerly line of said Lot 12; thence Westerly along said parallel line South 89° 52' 56" West 48.00 feet; thence tangent to the preceding course on the arc of a curve to the right having a radius of 338.27 feet a central angle of 49° 38' 05" an arc distance of 293.04 feet to the Easterly line of an easement for street purposes as described in Instrument No. 3338, recorded October 1, 1971 in Book D-5211 Page 313 of Deeds, Official Records of said County, and the terminus of the herein described strip, said easement being contiguous at its Northerly terminus with the Northerly line of said Parcel A of said Parcel Map L.A. No. 3041 and at its Westerly terminus with said Easterly line of said Easement for street purposes.

EXCEPTING therefrom that portion which lies within the Southerly 4.00 feet of said Lot 12.

9. A deed of trust to secure an indebtedness of $1,850,000.00, and any other amounts as therein provided, recorded August 17, 1976 as Instrument No. 64.

Dated: July 27, 1976
Trustor: Intset Investment Group, a General Partnership
Trustee: United California Bank, a California corporation
Beneficiary: United California Bank, a California corporation

10. A Covenant and Agreement, executed by Amcena Properties, Inc., in favor of the City of Los Angeles, and recorded January 9, 1986 as Instrument No. 86-031432, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

"We do hereby covenant and agree to and with said City to maintain a yard of 30 feet in width along the full common property line (our North property line).

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect until the Advisory Agency of the City of Los Angeles approves its termination.

11. A document entitled "Agreement", dated December 19, 1985, executed by and between R. R. Donnelley & Sons Company, a Delaware corporation and Amcena Properties, Inc., a corporation, and recorded January 13, 1986 as Instrument No. 86-043898, Official Records.

Which recites in part:

"Donnelley is executing a Covenant and Agreement Regarding Maintenance of Building (the "Donnelley Covenant") whereby Donnelley agrees to maintain a yard of 30 feet in width along the full common property line with the Amcena Property.

In consideration of Amcena executing a Covenant and Agreement Regarding Maintenance of Building whereby Amcena also agrees to maintain on the Amcena Property a yard of 30 feet in width along the full common property line with the Donnelley Property, Donnelley further covenants and agrees with Amcena that it will not request the release of the Donnelley Covenant by the City of Los Angeles without the prior written consent of Amcena or the then owner of the Amcena Property.

This Agreement shall run with the Donnelley Property and shall be binding upon Donnelley and all further owners of the Donnelley Property, their successors, heirs or assigns.

NOTE NO. 1: THIS COMPANY DOES REQUIRE CURRENT BENEFICIARY DEMANDS PRIOR TO CLOSING. If the demand is expired and a current demand cannot be obtained, our requirements will be as follows:

1. If this company accepts a verbal update on the demand, we will hold an amount equal to one monthly mortgage payment. This hold will be up and above the verbal hold the lender may have stipulated.

2. If this company cannot obtain a verbal update on the demand, we will either pay off of the expired demand, or wait for the amended demand, at the discretion of the escrow.

NOTE NO. 2: The premium for a policy of title insurance, if issued, will be based on the basic rate.

NOTE NO. 3: This report is incomplete as to the effect of documents, proceedings, liens, decrees or other matters which do not specifically describe said land, but which, if any do exist, may affect the title or impose liens or encumbrances thereon.

This company will require statement(s) of information, including a declaration of marital status, from all parties, in order to complete this report.

This company will also require that the spouse(s), if any, of the vestee(s) and/or purchaser(s) either:

1. Join in the execution of any instruments conveying or encumbering said real property.

2. Deed any possible interest in and to said land.

Plats enclosed/ jlh /ods

ALTA REPORT

We wish to report the following items, relating to the issuance of an American Land Title Association Loan Policy:

1. The following is reported for information only. The only conveyances affecting said land recorded within six (6) months of the date of this report are as follows:

Nil.

2. An inspection of said land has been ordered; upon its completion we will advise you of our findings.

CLTA PRELIMINARY REPORT FORM
EXHIBIT "A"

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1973
(AMENDED 12-6-85 and 2-20-86)
SCHEDULE OF EXCLUSIONS FROM COVERAGE

This policy does not insure against loss or damage, nor against costs, attorneys' fees or expenses, any or all of which arise by reason of the following:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in Schedule A, or in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but nothing in this paragraph shall modify or limit the extent to which the ordinary right of an abutting owner for access to a physically open street or highway is insured by this policy.
7. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part, whether or not shown by the public records at Date of Policy, or the effect of any violation of any such law, ordinance or governmental regulation, whether or not shown by the public records at Date of Policy.
8. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records.
9. Defects, liens, encumbrances, adverse claims, or other matters (a) whether or not shown by the public records at Date of Policy, but created, caused, suffered, assumed or agreed to by the insured claimant; (b) not shown by the public records and not otherwise excluded from coverage but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had been a purchaser or encumbrancer for value without knowledge.

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
(AMENDED 10-17-70 and 10-17-84)
SCHEDULE OF EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

CLTA PRELIMINARY REPORT FORM
EXHIBIT "A" (continued)

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970
(AMENDED 10-17-70)
SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY - 1979
EXCLUSIONS

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power; and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   .land use
   .improvements on the land
   .land division
   .environmental protection

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless a notice of taking appears in the public records on the Policy Date.

3. Title Risks:
   .that are known to you, but not to us, on the Policy Date - unless they appeared in the public records.
   .that result in no loss to you
   .that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:
   .to any land outside the area specifically described and referred to in Item 3 of Schedule A or
   .in streets, alleys, or waterways that touch your land.

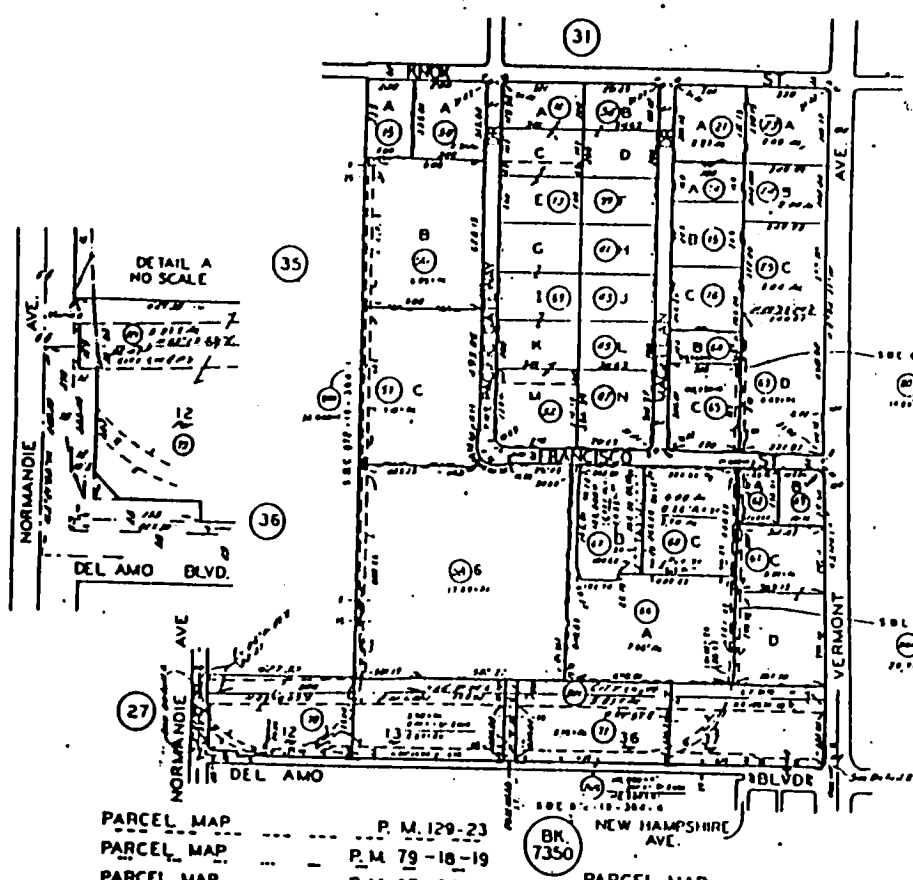
This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

Real Estate Information

1.800.527.9663

7351 : 34

SCALE 1" = 400'



THIS IS NOT A SURVEY OF THE LAND BUT IS COMPILED FOR INFORMATION SHOWN BY THE LAND TITLE COMPANY FROM OFFICIAL RECORDS.

301 000015

CODE 310

FOR PREV. ASSMT SEE: 7351-34

PARCEL MAP	P. M. 129-23
PARCEL MAP	P. M. 79-18-19
PARCEL MAP	P. M. 67-94-95
PARCEL MAP	P. M. 68-69-70
PARCEL MAP	P. M. 62-64
TRACT NO. 4671	M. B. 58-30-31
PARCEL MAP	P. M. 61-79-80
PARCEL MAP	P. M. 68-71
PARCEL MAP	P. M. 76-14
PARCEL MAP	P. M. 63-99
TRACT NO. 32036	M. B. 851-12-14
PARCEL MAP	P. M. 61-81-82

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

7351

SCALE 1"

KNOX ST.

STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE

(Non-Residential)

American Industrial Real Estate Association

March 29, 1988
(Date for Reference Purposes)

1. Buyer.

1.1 Coca-Cola Enterprises (the "Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof (the "Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow (the "Escrow") to close on May 29, 1988 (the "Expected Closing Date") to be held by Commerce Escrow - Mr. Mark Minsky (the "Escrow Holder"), whose address is 1545 Wilshire Blvd., Los Angeles Telecopier No. 213/484-0417 upon the terms and conditions set forth in this agreement (the "Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless the Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counter-offer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms acceptable to both Parties.

2. Broker.

2.1 The real estate broker or brokers presenting this Agreement to Seller are: (Check applicable box(es).)

The Seeley Company who, with respect to this Agreement, represents:

☒ the Buyer exclusively ("Buyer's Broker")/
☐ both Buyer and Seller,

and Collins-Fuller who, with respect to this Agreement, represents:

☐ the Seller exclusively (the "Seller's Broker")/
☐ both the Seller and Buyer,

(the "Broker(s)"), all such named Broker(s) being the procuring cause(s) of this offer. See paragraph 26 for Disclosures Regarding the Nature of a Real Estate Agency Relationship.

2.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Broker(s) named in paragraph 2.1, and no broker or other person, firm or entity, other than said Broker(s) is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Broker(s) by reason of any dealings or act of the indemnifying Party.

3. Property.

3.1 The real property (the "Property") that is the subject of this offer consists of (insert a brief physical description) That certain 150,000 sq.ft. +/- sq. ft. concrete tilt-up industrial building located on that certain 401,623 parcel of land commonly known as 18233 Hoover Street, Los Angeles, CA is located in the City of Los Angeles, County of Los Angeles, State of _____, is commonly known by the street address of 18233 Hoover Street, Los Angeles, CA 90247 and is legally described as: See above

3.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Stewart Title, 523 West 6th St., Los Angeles, CA Terry McGuire (the "Title Company"), which shall be the title company to issue the title policy hereinafter described.

3.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which the law of the state in which the Property is located provides is part of the Property, as well as the following items, if any, owned by Seller and presently located in the Property: electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, and All other improvements (collectively, the "Improvements").

3.4 If the Property is located in the State of California, the Broker(s) is/are required under the Alquist-Priolo Special Studies Zones Act, to disclose to a prospective purchaser of real property whether the property being purchased is located within a delineated special studies zone (a zone that encompasses a potentially or recently active trace of an earthquake fault that is deemed by the State Geologist to be sufficiently active and well defined enough to constitute a potential hazard to structures from surface faulting or fault creep). If the Property is located within such a special studies zone, its development may require a geologic report from a state registered geologist. In accordance with such law, the Broker(s) hereby inform(s) Buyer that the Property ☐ (a) Is not within such a special studies zone.
☐ (b) Is within such a special studies zone.

4. Purchase Price.

4.1 The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be $8,200,000.00 payable as follows

(a) Cash down payment, including the Deposit as defined in paragraph 5.3 (or if an all cash transaction, the Purchase Price): $8,200,000.00

(Strike if not applicable)

~~(b) Amount of "New Loan" as defined in paragraph 6.1, if any:~~ $_____

(c) Buyer shall take title to the Property subject to the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)"):

(i) An Existing Note (the "First Note") with an unpaid principal balance as of the Closing of approximately: $_____
Said existing note is payable at $_____ per month, including interest at the rate of _____% per annum until paid (and/or the entire unpaid balance is due on _____).

applicable)

(ii) An Existing Note (the "Second Note") with an unpaid principal balance as of the Closing of approximately: $_____
Said Existing Note is payable at $_____ per month, including interest at the rate of _____% per annum until paid (and/or the entire unpaid balance is due on _____).

(Strike if not applicable)

(d) Buyer shall give Seller a deed of trust (the "Purchase Money Deed of Trust") on the Property, to secure the promissory note of Buyer to Seller described in ~~paragraph 7 (the "Purchase Money Note") in the amount of:~~ $_____

Total Purchase Price: $8,200,000.00

Initials

Initials

FORM "2"

~~4.2 If an Existing Deed of Trust permits the beneficiary thereof to require payment of a transfer fee as a condition to the transfer of~~ Property subject to such Existing Deed of Trust, Buyer agrees to pay transfer fees and costs of ~~up to one and one-half percent (1½%) of the unpaid principal balance of the applicable Existing Obligation.~~

5. Deposits.

5.1 Buyer hereby delivers a check in the sum of $ 50,000, payable to Commerce Escrow, to be *(check applicable box)* ☐ forthwith deposited in the payee's trust account ☒ held uncashed until the Date of Agreement. When cashed, the check shall be deposited into the payee's trust account to be applied toward the Purchase Price of the Property at the Closing, as defined in paragraph 8.3. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

5.2 Within five (5) business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of $ ~~_____~~, to be applied to the Purchase Price at the Closing.

5.3 The funds deposited with Escrow Holder by or on behalf of Buyer under paragraphs 5.1 ~~and 5.2~~ above (collectively the "Deposit"), shall be deposited by Escrow Holder in such State or Federally chartered bank as Buyer may select and in such interest-bearing account or accounts as Escrow Holder or Broker(s) deem appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is _____.

6. Financing Contingency. *(Strike if not applicable)*

~~6.1 This offer is contingent upon Buyer obtaining from an insurance company, bank, savings and loan association or other financial institution,~~ or from any correspondent or agent thereof, a commitment to lend to Buyer a sum not less than $_____, at a fixed interest rate not to exceed _____% per annum, payable in equal monthly installments, including interest, amortized over a period of not less than _____ years and all due in not less than _____ years, or at a variable interest rate commencing at an interest rate not to exceed _____% per annum, amortized over a period of not less than _____ years and all due in not less than _____ years, and in either case, with loan fees not to exceed _____% of the amount of the new loan (the "New Loan"). The New Loan shall be secured by a first deed of trust upon the Property and shall be upon the following additional terms and conditions: _____

and upon such other terms and conditions as are usually required by such lender.

6.2 Buyer hereby agrees to diligently pursue obtaining the New Loan. If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing, that the New Loan has not been obtained within _____ days following the Date of Agreement, then it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived the New Loan contingency.

6.3 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in Paragraph 6.2 hereof, that Buyer has not obtained said New Loan, then this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of Buyer's Deposit and any other funds deposited by or for Buyer with Escrow Holder or Seller, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.

7. Purchase Money Note. *(Strike if not applicable)*

7.1 The Purchase Money Note shall provide for interest on unpaid principal at the rate of _____% per annum, with principal and interest to be paid as follows: _____

The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or New Loan expressly called for by this Agreement.

7.2 The Purchase Money Note and the Purchase Money Deed of Trust shall contain provisions regarding the following:

(a) *Prepayment.* Principal may be prepaid in whole or in part at any time without penalty, at the option of Buyer.

(b) *Late Charge.* A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within ten (10) days after it is due.

(c) *Due On Sale.* In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's ~~option, require the entire unpaid balance of the Purchase Money Note to be then paid in full~~.

8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counter-offers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending this Agreement unless specifically so instructed by the Parties or a Broker herein.

8.2 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law, custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.3 Subject to satisfaction of the contingencies hereinafter described, Escrow Holder shall close this escrow (the "Closing") by recording the grant deed and other documents required to be recorded and by disbursing the funds and documents in accordance with this Agreement.

8.4 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.4, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of the breach of any affirmative covenant or warranty in this Agreement that may have been involved. In the event of such termination, Buyer shall be promptly refunded all funds deposited by or on behalf of Buyer with a Broker, Escrow Holder or Seller, less only Title Company and Escrow Holder cancellation fees and costs, ~~all of which shall be Buyer's obligation~~.

8.5 The Closing shall occur on the ~~Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing, provided~~, however, that if the Closing does not occur by the Expected Closing Date and the Expected Closing Date is not extended by mutual instructions of the Parties, a Party hereto not then in default under this Agreement may notify the other Party, Escrow Holder, and Broker(s), in writing that, unless the Closing occurs within five (5) business days ~~following~~ said notice, the Escrow and this Agreement shall be deemed terminated without further notice or instructions. If Escrow is brought into condition for Closing within said (5) day period, the Closing shall occur as soon as it is in ~~condition to do~~.

8.6 ~~Should the Closing not occur during said five (5) day period, this Agreement and Escrow shall be deemed terminated and Escrow~~ Holder shall forthwith return all monies and documents, less only Escrow Holder's reasonable ~~fees and expenses, to the Party who deposited them~~. Such Party shall indemnify and hold Escrow ~~Holder harmless~~ in connection with such return. However, no refunds or documents shall be returned ~~to a party claimed by written notice to Escrow Holder to be in default under this Agreement~~. See addendum attached hereto and made a part hereof

8.7 Any return of deposited funds or documents shall not relieve or release either Buyer or Seller from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained herein.

8.8 If ~~_____~~ states for any reason other than Seller's breach or default, then at Seller's request, and as a condition to the return of Buyer's deposit, Buyer shall within five (5) days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property.

9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies:

(a) *Disclosure.* Buyer's receipt and writtten approval, within ten (10) days after delivery to Buyer, of a completed Property Information Sheet (the "Property Information Sheet"), concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the American Industrial Real Estate Association (the "A.I.R."). Seller shall provide Buyer with the Property Information Sheet within ten (10) days following the Date of Agreement.

(b) *Physical Inspection.* Buyer's written approval, within ten (10) days following the later of the Date of Agreement or receipt by Buyer of the Property Information Sheet, of an inspection by Buyer, at Buyer's expense, of the physical aspects of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer's written approval, within twenty (20) days following ~~the later of the Date of Agreement or~~ Completion & Receipt ~~receipt by Buyer of the Property Information Sheet~~, of a Hazardous Substance Conditions report concerning the Property and relevant such Report adjoining properties. Such report will be obtained at Buyer's direction and expense. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

** as soon as possible after the satisfaction of all conditions contained in this Agree but in no event later than expected closing date. The expected closing date sha not be extended except by mutual agreement of the parties.

Initials

Initials

~~(d) Soil Inspection. Buyer's written approval, within twenty (20) days after the later of the Date of Agreement or receipt by Buyer of~~ the Property Information Sheet, of a soil test report concerning the Property. ~~Said report shall be obtained at Buyer's direction and expense. Seller shall promptly provide to Buyer copies of any existing soils reports that Seller may have.~~

(e) *Condition of Title.* Buyer's written approval of a current preliminary title report concerning the Property (the "PTR") issued by the Title Company, as well as all documents (the "Underlying Documents") referred to in the PTR, and the issuance by the Title Company of the title policy described in 10.1. Seller shall cause the PTR and all Underlying Documents to be delivered to Buyer promptly after the Date of Agreement. buisness Buyer's approval is to be given within ten (10) days (or twenty-one (21) days if Buyer elects an ALTA survey under paragraph 9.1(f)) after receipt of said PTR and legible copies of all Underlying Documents. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this condition, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(f) *Survey.* Buyer's written approval, within twenty-one (21) days after receipt of the PTR and Underlying Documents, of an ALTA title supplement based upon a survey prepared to American Land Title Association (the "ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within ten (10) feet either side of the Property boundary lines. The survey shall be prepared at Buyer's direction and expense.

~~(g) Existing Leases and Tenancy Statements. Buyer's written approval, within ten (10) days after receipt of legible copies of all leases,~~ subleases or rental arrangements (collectively the "Existing Leases") affecting ~~the Property, and a statement (the "Tenancy Statement") in the latest form or equivalent to that published by the A.I.R., executed by Seller and each tenant and subtenant of the Property. Seller shall use its best efforts to provide Buyer with said Existing Leases and Tenancy Statements promptly after the Date of Agreement.~~

(h) *Other Agreements.* Buyer's written approval, within ten (10) days after receipt, of a copy of any other agreements ("Other Agreements") known to Seller that will affect the Property beyond the Closing. Seller shall cause said copies to be delivered to Buyer promptly after the Date of Agreement.

~~(i) Financing. If paragraph 6 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.~~

~~(j) Existing Notes. If paragraph 4.1(c) has not been stricken, Buyer's written approval, within ten (10) days after receipt, of conformed~~ and legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively the "Loan Documents") ~~to which the Property~~ will remain subject after the Closing, including a beneficiary statement (the "Beneficiary Statement") ~~executed~~ by the holders of the Existing Notes confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with said loan. Seller shall use its best efforts to provide Buyer with said Loan Documents and Beneficiary Statement promptly after the Date of Agreement. Buyer's obligation to close is further conditioned upon Buyer's being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 4.2 hereof.

(k) *Destruction, Damage or Loss.* There shall not have occurred prior to the Closing, a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than $10,000.00 to repair or cure. If the cost of repair or cure is $10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within ten (10) days after receipt of written notice of a loss costing more than $10,000.00 to repair or cure, to either terminate this transaction or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than $10,000.00, and Buyer does not elect to terminate this transaction, Buyer shall be entitled to any insurance proceeds applicable to such loss and the exclusive right to settle and dispose of such insurance claim(s). Unless otherwise notified in writing by either Party or Broker, Escrow Holder shall assume no destruction, damage or loss costing more than $10,000.00 to repair or cure has occurred prior to Closing.

(l) *Material Change.* No Material Change, as hereinafter defined, shall have occurred with respect to the Property that has not been approved in writing by Buyer. For purposes of this Agreement, a "Material Change" shall be a change in the status of the use, occupancy, tenants, or condition of the Property as reasonably expected by the Buyer, that occurs subsequent to the date of this offer. Buyer shall have ten (10) days following receipt of written notice from any source of any such Material Change within which to approve or disapprove same. Unless otherwise notified in writing by either Party or Broker, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(m) *Seller Performance.* The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(n) *Breach of Warranty.* That each representation and warranty of Seller herein be true and correct as of the Closing. Escrow Holder shall assume that this condition has been satisfied unless notified to the contrary in writing by Buyer or Broker(s) prior to the Closing.

(o) *Broker's Fee.* Payment at the Closing of such Broker's Fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Broker(s). It is agreed by Buyer, Seller and Escrow Holder that Broker(s) is/are a third party beneficiary of this Agreement insofar as the Broker's fee is concerned, and that no change shall be made by Buyer, Seller or Escrow Holder with respect to the time of payment, amount of payment, or the conditions to payment of the Broker's fee specified in this Agreement, without the written consent of Broker(s).

9.2 If, within the applicable time period, Buyer disapproves any matter subject to Buyer's approval, ("Disapproved Item"), Seller shall expected have the right, within ten (10) days following receipt of notice of Buyer's said disapproval, to elect ("Seller's Election") to cure or not cure the closing Disapproved Item prior to the ~~Closing~~. Seller's failure to give to Buyer within said ten (10) day period written notice of Seller's Election to cure any date Disapproved Item shall be conclusively presumed to be Seller's Election not to cure such disapproved item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the election, within ten (10) days after Seller's Election, to either n accept title to the Property subject to that Disapproved Item, or to terminate this transaction. Buyer's failure to elect termination by written notice to Seller within said ten (10) day period shall constitute Buyer's election to ~~accept title to the Property, subject to that Disapproved Item without deduction or offset~~. Unless the parties instruct otherwise, if the time periods for Seller's and Buyer's said Elections would expire on a date subsequent to the Expected Closing Date, the Expected Closing Date shall be deemed extended to coincide with the expiration of the period within which Seller may elect to cure the Disapproval Item, or, if Seller elects not to cure, the period within which Buyer may elect to terminate this transaction, as the case may be.

terminate this transaction.

disapproved 9.3 If Buyer shall fail, within the applicable time specified, to approve ~~or disapprove~~ in writing to Escrow Holder, Seller and the other Party's Broker, any item, matter or document subject to Buyer's approval under the terms of this Agreement, it shall be conclusively presumed that Buyer has approved such item, matter or document. Buyer's conditional approval shall constitute a disapproval, unless provision is made by the Seller within the time specified therefor by the Buyer in the conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer.

9.4 All of the contingencies specified in subparagraphs (a) through (n) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "Buyer's Contingencies."

9.5 Buyer understands and agrees that until such time as all Buyer's Contingencies have been satisfied or waived, Seller and/or its agents may solicit, entertain and/or accept back-up offers to purchase the subject Property in the event the transaction covered by this Agreement is not consummated.

~~9.6 As defined in subparagraph 3.1(c), Buyer and Seller acknowledge that extensive local, state and Federal legislation establish broad~~ liability upon owners and/or users of real property for the investigation and remediation of a Hazardous Substance Condition. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Broker(s). Buyer and Seller acknowledge that they have been advised by Broker(s) to consult their own technical and legal experts with respect to the possible Hazardous Substance Condition aspects of this Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Broker(s) with respect thereto. Buyer and Seller hereby assume all responsibility for the impact of such ~~Hazardous Substance Conditions upon their respective interests herein.~~

10. Documents Required at Closing:

10.1 Escrow Holder shall cause to be issued to Buyer a standard coverage, owner's form, policy of title insurance, effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto. ~~In the event there is a Purchase Money Deed of Trust in the transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.~~

10.2 Seller shall deliver or cause to be delivered to Escrow Holder in time for delivery to Buyer at the Closing, an original ink signed:

(a) Grant deed (or equivalent), duly executed and in recordable form, conveying fee title to the Property to Buyer or Buyer's Assignee.

~~(b) Tenancy Statements concerning Existing Note(s).~~

(c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller to Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the A.I.R. or its equivalent.

~~(d) If applicable, the Tenancy Statements executed by Seller and the Tenant of the Property.~~

(e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least three (3) business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

10.3 Buyer shall deliver or cause to be delivered to Seller through escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement for prorations, expenses and adjustments. The balance of the cash portion of the Purchase Price, including Buyer's escrow charges and other cash charges, if any, shall be deposited by Buyer with Escrow Holder, by cashier's check drawn upon a local major banking institution, federal funds wire transfer, or any other method acceptable to Escrow Holder as immediately collectable funds, no later than 11:00 o'clock A.M. on the business day prior to the Expected Closing Date.

Initials

Initials

~~(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of~~ those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.

(c) The assumption portion of the Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.1(d), above, duly executed by Buyer with respect to the obligations of the Lessor accruing after the Closing as to each Existing Lease.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

~~(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.~~

11. Prorations, Expenses and Adjustments.

11.1 *Taxes.* Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment shall be made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such proration. Seller shall pay and discharge in full at or before the Closing the unpaid balance of any special assessment bonds.

11.2 *Insurance.* If Buyer elects to take an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current premium therefor shall be prorated through Escrow as of the date of Closing.

11.3 *Rentals, Interest and Expenses.* Collected rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer by a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

~~11.6 *Variations In Existing Note Balances.* In the event that Buyer is taking title to the Property subject to an Existing Deed of Trust(s), and~~ in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the Closing will be more or less than the amount set forth in paragraph 4.1(c) hereof (the "Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Puchase Money Note, the cash required at the Closing per Paragraph 4.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 *Variations In New Loan Balance.* In the event Buyer is obtaining a New Loan and in the event that the amount of the New Loan actually obtained is greater than the amount set forth in Paragraph 6.1 hereof, the Purchase Money Note, if one is called for in this transaction, shall be ~~reduced by the excess of the actual face amount of the New Loan over such amount as designated in Paragraph 6.1 hereof~~.

11.8 *Escrow Costs and Fees.* Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance.

12. Representation and Warranties of Seller and Disclaimer.

12.1 Seller hereby makes the following warranties and representations to Buyer and Broker(s), which warranties and representations shall survive the Closing and delivery of the deed, and each of which, unless otherwise noted herein, is (a) material and reasonably relied upon by Buyer and Broker(s) and (b) true in all respects both as of the Date of Agreement and the date of Closing:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder. **

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in Paragraph 9.1(k) hereof dealing with destruction, damage or loss, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted. The heating, ventilating, air conditioning, plumbing, elevators, loading doors and electrical systems shall be in good operating order and condition at the time of the Closing.

(c) *Hazardous Substances/Storage Tanks.* Seller has no actual knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance (as defined in paragraph 9.1(c)), nor of the existence or prior existence of any above or below ground storage tank or tanks.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes, or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency, or of any casualty insurance company that any work of investigation, remediation, repair, maintenance or improvement is to be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify, orally or in writing, ~~any Existing Lease~~ or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* To the best knowledge of Seller, no one will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanic's or materialman's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* To the best of Seller's knowledge, no actions, suits, or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality that would affect the Property or the right to occupy or utilize it.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Broker(s) in writing of any Material Change (as defined in paragraph 9.1(l)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy proceeding.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the Occupational Safety and Health Act, hazardous substance laws, or any other act, ordinance or law, have been made by either Party or Broker, or relied upon by either Party hereto

13. Possession.

13.1 Possession of the Property, ~~subject however to the rights of tenants under Existing Leases~~, shall be given to Buyer at the Closing

14. Buyer's Entry.

14.1 At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction of any disrupted soil. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify and hold harmless Seller and the Property of and from any and all claims demands, losses, costs, expenses (including reasonable attorneys' fees), damages or recoveries, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith

15. Further Documents and Assurances.

15.1 Buyer and Seller shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. Buyer and Seller agree to provide all further information, and to execute and deliver all further documents and instruments, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

16.1 In the event of any litigation or arbitration between the Buyer, Seller, and Broker(s), or any of them, concerning this transaction, the prevailing party shall be entitled to reasonable attorneys' fees and costs. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred in good faith.

17. Prior Agreements/Amendments.

17.1 The contract in effect as of the Date of Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.

17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

~~(a) If the sale shall not be consummated due to the default of Buyer, the Buyer shall be liable to and shall pay to Broker(s) the commission~~ that Broker(s) would have received had the sale been consummated. ~~This obligation of Buyer is in addition to any obligation with respect to liquidated damages.~~

18.2 Upon the Closing, Broker(s) is/are authorized to publicize the facts of this transaction.

** The conveyance of the properties from Seller to Buyer will not violate the provisions of the subdivision map act adopted by the State of California.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BUYER AND SELLER HEREBY ACKNOWLEDGE THAT THEY HAVE BEEN AND ARE NOW ADVISED BY THE BROKER(S) TO CONSULT AND RETAIN THEIR OWN EXPERTS TO ADVISE AND REPRESENT THEM CONCERNING THE LEGAL AND INCOME TAX EFFECTS OF THIS AGREEMENT, AS WELL AS THE CONDITION AND/OR LEGALITY OF THE PROPERTY, THE IMPROVEMENTS AND EQUIPMENT THEREIN, THE SOIL THEREOF, THE CONDITION OF TITLE THERETO, THE SURVEY THEREOF, THE ENVIRONMENTAL ASPECTS THEREOF, THE INTENDED AND/OR PERMITTED USAGE THEREOF, THE EXISTENCE AND NATURE OF TENANCIES THEREIN, THE OUTSTANDING OTHER AGREEMENTS, IF ANY, WITH RESPECT THERETO, AND THE EXISTING OR CONTEMPLATED FINANCING THEREOF, AND THAT THE BROKER(S) IS/ARE NOT TO BE RESPONSIBLE FOR PURSUING THE INVESTIGATION OF ANY SUCH MATTERS UNLESS EXPRESSLY OTHERWISE AGREED TO IN WRITING BY BROKER(S) AND BUYER OR SELLER.

THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.

If this Agreement has been filled in it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the real estate Broker(s) or their agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Agreement or the transaction involved herein.

BROKER:	BUYER:
The Seeley Company	Coca-Cola Enterprises
By _____ /Date _____	By _____ Date 3/31/89
Name Printed: Drexel W. Chapman, Jr.	Name Printed: Fred M. Robinson
Title: Agent	Title: V.P. Mktg.
20300 S. Vermont Ave., Suite 200	1334 S. Central Avenue
Address	Address
Torrance, CA 90510	Los Angeles, CA 90021
213/538-3182 — Telephone	_____ — Telephone
213/329-3344 — Telecopier No.	_____ — Telecopier No.

28. Acceptance.

28.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

28.2 Seller acknowledges that Broker(s) has/have been retained to locate a Buyer and is/are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Broker(s), Seller agrees to pay Broker(s) a real estate brokerage fee in a sum equal to * ____% of the Purchase Price (the "Broker's Fee") divided equally in such shares as said Brokers shall direct in writing. As is provided in paragrapah 9.1(o), this Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such brokerage fee to Broker(s) out of the proceeds accruing to the account of Seller at the Closing.

28.3 Seller acknowledges receipt of a copy hereof and authorizes the Broker(s) to deliver a signed copy to Buyer.

*per The Seeley Company schedule

BROKER:	SELLER:
_____	_____
By: _____ /Date _____	By: _____ /Date _____
Name Printed: _____	Name Printed: _____
Title: _____	Title _____
_____ Address	_____ Address
_____ Telephone	_____ Telephone
_____ Telecopier No.	_____ Telecopier No.

19. Notices.

19.1 Whenever any Party hereto, Escrow Holder or Broker(s) herein shall desire to give or serve any notice, demand, request, approval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid return receipt requested addressed as set forth adjacent to that party's or Broker's signature on this Agreement or by telecopy. Service of any such communication shall be deemed made on the date of actual receipt at such address. **

19.2 Any Party or Broker hereto may from time to time, by notice in writing served upon the other Party as aforesaid, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made. ** as evidenced by th return receipt of mail

20. Duration of Offer.

20.1 If this offer shall not be accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of Los Angeles on the date of April 6, 1988 it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counter-offer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counter-offer.

21. Liquidated Damages.

21.1 If this paragraph 21 is initialled by Buyer and Seller the liquidated damages provisions of this paragraph 21 shall be a part of this Agreement.

21.2 IT IS ACKNOWLEDGED BY THE PARTIES HERETO THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT, THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY SELLER IN THE EVENT OF BUYER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES (THE "LIQUIDATED DAMAGES") IN THE AMOUNT OF $ 25,000.00 PLUS THE INTEREST, IF ANY, ACCRUED ON THE LIQUIDATED DAMAGES PORTION OF BUYER'S DEPOSIT DURING THE ESCROW. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

_____ _____

Buyer Initials *Seller Initials*

22. Arbitration.

22.1 Any controversy as to whether Seller is entitled to the Liquidated Damages and/or Buyer is entitled to the return of Deposit money, shall be determined by binding arbitration under the Commercial Rules of the American Arbitration Association (the "Commercial Rules"). Hearings on such arbitration shall be held in the county where the Property is located.

22.2 Any such controversy shall be arbitrated by three (3) arbitrators who shall be impartial real estate brokers with at least five full time years of experience in the area where the Property is located in the type of real estate that is the subject of this Agreement and shall be appointed under the Commercial Rules. The arbitrators shall hear and determine said controversy in accordance with applicable law and the intention of the parties as expressed in this Agreement, as the same may have been duly modified in writing by the Parties prior to the arbitration upon the evidence produced at an arbitration hearing scheduled at the request of either Buyer or Seller.

22.3 Such pre-arbitration discovery shall be permitted as is authorized under the Commercial Rules or state law applicable to arbitration proceedings.

22.4 All awards shall be executed by at least two of the three arbitrators. The award shall be rendered within thirty (30) days after the conclusion of the hearing.

22.5 The award shall also include attorneys' fees and costs to the prevailing party. Judgment may be entered on the award in any court of competetent jurisdiction notwithstanding the failure of a Party duly notified of the arbitration hearing to appear thereat.

22.6 Buyer's resort to or participation in such arbitration proceeding shall not bar suit in a court of competent jurisdiction by the Buyer for damages and/or specific performance unless and until the arbitration results in an award to the Seller of liquidated damages, in which event such award shall act as a bar against any action by Buyer for damages and/or specific performance.

23. Applicable Law.

23.1 This Agreement shall be governed by the laws of the state in which the Property is located.

24. Time of Essence.

24.1 Time is of the essence of this Agreement.

25. Counterparts.

25.1 This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

26. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

26.1 The Parties and Broker(s) agree that their relationship(s) shall be governed by the principles set forth in California Civil Code, Section 2375, as summarized in the following paragraph 26.2.

26.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Broker(s) in this transaction, as follows:

(a) *Seller's Agent.* A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations. (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skill and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) *Buyer's Agent.* A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skill and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) *Agent Representing Both Seller and Buyer.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) *In a dual agency situation,* the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 26.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure.

(e) *Confidential Information.* Buyer and Seller agree to identify to Broker(s) as "Confidential" any communication or information given Broker(s) that is considered by such Party to be confidential.

27. Additional Provisions:

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum consisting of paragraphs 28 through 34. (It will be presumed no other provisions are included unless specified here.)

See addendum attached hereto and made a part hereof.

ADDENDUM TO STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE
IN CARSON, CALIFORNIA
DATED MARCH 29, 1988

28. ADDITIONAL CONDITIONS

In addition to the conditions precedent set forth in paragraph 9 above, the following shall constitute conditions precedent to the performance of each of Buyer's obligations hereunder

(a) Approval by Buyer of the condition of the Property and any improvements, fixtures, appurtenances and equipment located thereon or affixed thereto;

(b) Approval by Buyer of a soils report, obtained at Buyer's sole cost and expense, concerning the Property;

(c) Approval by Buyer of the results of an investigation conducted by Buyer into the nature and extent of laws, rules, regulations and ordinances affecting the use and development of the Property by Buyer, approvals likely to be imposed by governmental agencies in connection with such development; and

(d) Obtaining all necessary internal corporate approvals to purchase and improve the Property.

The granting of any approval described in this paragraph shall be within Buyer's sole and absolute discretion. In the event that Buyer shall not deliver to Escrow Holder, within forty-five (45) days from the date of opening of the Escrow, a statement in writing that all of the conditions set forth in this paragraph have either been satisfied or waived, then this Agreement and all of the obligations of Buyer to Seller in connection with this Agreement shall be terminated. The Escrow Holder shall then immediately return the Deposit to Buyer, less ½ title company and Escrow Holder cancellation fees and costs, and Buyer and Seller shall execute such instruments and documents as may be necessary or appropriate to cancel the Escrow.

29. PURCHASE PRICE DETERMINATION

Notwithstanding anything to the contrary contained in paragraph 4.1, the parties hereto agree that the Purchase Price amount set forth in paragraph 4.1 is based on the representation by Seller to Buyer that the property is a parcel of 9.22 usable acres in area. In the event that Buyer has prepared, at its sole cost and expense, a survey of the property by a licensed land surveyor or a civil engineer, and such survey determines a usable area of the property less than 9.22 acres, then the Purchase Price shall be adjusted on the basis of value per square foot of usable area. of $20.42

30. REPORTS AND MATERIALS

Seller shall deliver to Buyer, within ten (10) days of opening of the Escrow, copies of all studies, reports, information and other material in Seller's possession relating to the condition of the property or of potential benefit to Buyer in Buyer's evaluation of the property, including without limitation all soils reports, toxic and hazardous substance reports and studies, and surveys.

31. ASSESSMENTS

Seller shall pay all assessments relating to the property prior to the close of the Escrow.

32. ASSIGNMENT

Buyer shall have the right to assign this Agreement and all of Buyer's rights hereunder, without Seller's prior consent, provided that the assignee assumes all obligations of Buyer under this Agreement.

33. HAZARDOUS SUBSTANCES

Seller hereby agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to Buyer) Buyer, its directors, officers, employees, agents, successors, and assignees from and against any and all claims, losses, damages, liabilities, fines, penalties charges, administrative and judicial proceedings and orders, judgements, enforcement actions of any kind, and all costs and expenses incurred therewith, arising out of (a) the presence on or under the Property of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on or under the property or (b) any activity carried on or undertaken on or off the Property prior to the Closing, whether by Seller or any predecessor in title, or any employees, agents, contractors of Seller or any predecessor in title, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances located on or under the Property.

34. CANCELLATION OF ESCROW

(a) In the event that the Closing does not occur at the time and in the manner provided in this Agreement, due to the material failure of Buyer to comply with its obligations under this Agreement, Seller shall have the right to cancel the Escrow by written notice to the Escrow Holder, and upon such cancellation all costs of the Escrow and all title company cancellation fees shall be paid by Buyer.

(b) In the event that the Closing does not occur at the time and in the manner provided in this Agreement due to the material failure of Seller to comply with its obligations under this Agreement, Buyer shall have the right to cancel the Escrow by written notice to the Escrow Holder, and upon such cancellation all costs of the Escrow and all title company cancellation fees shall be paid by Seller.

BUYER

BY: _____

DATE: 2/13/18

SELLER

BY: _____

DATE: _____

THE SEELEY COMPANY
20300 So. Vermont Ave., Suite 200, Torrance, CA 90502
P.O. Box 4150, Torrance, California 90510-4150
Telephone (213) 538-3182
FAX: (213) 329-3344

COMMERCIAL REAL ESTATE SINCE 1908

April 7, 1988

Mr. Michael Collins
COLLINS FULLER CORPORATION
P.O. Box 7860
Newport Beach, CA 92658-7860

RE: Purchase Offer Counterproposal Dated April 4, 1988 on 18233 Hoover Street, Los Angeles

Dear Mike:

Please find below Coca-Cola Enterprises' Counter Offer to Purchase the property located at 18233 Hoover Street, Los Angeles, CA. The following Paragraphs shall be amended as follows:

4. Purchase Price: $8,575,000.00

8. Escrow & Closing: Escrow shall close forty-five (45) days from date of signed escrow instructions by both parties; provided, however, that in the event the Hazardous Substance Conditions Report is prepared and received by Buyer later than 25 days following the opening of escrow, then the closing date shall be extended by the number of days exceeding such 25th day.

9. Hazardous Substance Conditions Report: Buyer shall have 20 days following receipt of the completed report to approve such report.

28. Additional Conditions: All approvals to be obtained forty-five (45) days from date of signed escrow instructions by both parties.

33. Language regarding the warranties concerning hazardous substances must be mutually agreeable by both Buyer and Seller prior to close of escrow.

34. Upon the counter signature of the "Seller" to this letter, "Buyer" shall deliver a check in the amount of $200,000.00, payable to the order of The Muller Company which funds shall constitute the "Deposit" under the attached Standard Offer to Purchase and Escrow Instructions dated March 29, 1988 attached hereto ("The Offer"). The Offer is hereby modified to provide that Seller is obligated to return the Deposit to Buyer in all instances where the Offer provides that Escrow Holder is obligated to return the Deposit to Buyer.

002 00106

The above changes to the attached Offer and Counter Offer to Purchase, represents the Purchase and Sale Transaction in its entirety, unless modified by mutual consent.

Sincerely,

Drexel W. Chapman, Jr.
Senior Marketing Executive

DWC/clp

Signed and approved this 7th day of April, 1988.

BUYER: COCA-COLA ENTERPRISES

BY:_____

SELLER: ARBOR POINT - M#1

BY:_____

Coca-Cola Enterprises Inc
1334 South Central Avenue
Los Angeles, CA 90021
213 746-5555

Coca-Cola Enterprises
A Bottling System..

April 5, 1988

Mr. Michael Collins
COLLINS FULLER CORPORATION
P. O. Box 7860
Newport Beach, CA 92658-7860

RE: Purchase Offer Counterproposal Dated April 4, 1988 on 18233 Hoover Street, Los Angeles

Dear Mike:

Please find below Coca-Cola Enterprises' Counter Offer to Purchase the property located at 18233 Hoover Street, Los Angeles, CA. The following Paragraphs shall be amended as follows:

4. Purchase Price: $8,450,000.00

8. Escrow & Closing: Escrow shall close forty-five (45) days from date of signed escrow instructions by both parties; provided, however, that in the event the Hazardous Substance Conditions Report is prepared and received by buyer later than 25 days following the opening of escrow, then the closing date shall be extended by the number of days exceeding such 25th day.

9. Hazardous Substance Conditions Report: Buyer shall have 20 days following receipt of the completed report to approve such report.

28. Additional Conditions: All approvals to be obtained forty-five (45) days from date of signed escrow instruction by both parties.

33. Language regarding the warranties concerning hazardous substances must be mutually agreeable by both Buyer and Seller prior to close of escrow.

STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE

(Non-Residential)

American Industrial Real Estate Association

8/23/88

(Date for Reference Purposes)

1. Buyer.

1.1 Coca-Cola Bottling Company Of Los Angeles (the "Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof (the "Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow (the "Escrow") to close on October 7, 1988 (the "Expected Closing Date") to be held by Commerce Escrow - Mr. Mark Minsky (the "Escrow Holder"), whose address is 1545 Wilshire Blvd., Los Angeles Telecopier No. 213/484-0417 upon the terms and conditions set forth in this agreement (the "Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless the Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counter-offer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms acceptable to both Parties.

2. Broker.

2.1 The real estate broker or brokers presenting this Agreement to Seller are: (Check applicable box(es).)

The Seeley Company, who, with respect to this Agreement, represents:

☒ the Buyer exclusively ("Buyer's Broker")/
☐ both Buyer and Seller,

and The Klabin Company, who, with respect to this Agreement, represents:

☒ the Seller exclusively (the "Seller's Broker")/
☐ both the Seller and Buyer,

(the "Broker(s)"), all such named Broker(s) being the procuring cause(s) of this offer. See paragraph 26 for Disclosures Regarding the Nature of a Real Estate Agency Relationship.

2.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Broker(s) named in paragraph 2.1, and no broker or other person, firm or entity, other than said Broker(s) is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Broker(s) by reason of any dealings or act of the indemnifying Party.

3. Property.

3.1 The real property (the "Property") that is the subject of this offer consists of (insert a brief physical description)
That certain 160,000+/- sq. ft. concrete tilt-up industrial buildingon that certain 325,393+/- sq.ft. parcel of land commonly known as 19899 Pacific Gateway Drive
is located in the City of Los Angeles, County of Los Angeles
State of California is commonly known by the street address of
19899 Pacific Gateway Drive, Torrance, Ca 90502
and is legally described as:
See Above

3.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Stewart Title, 523 West 6th Street, L.A., California (the "Title Company"), which shall be the title company to issue the title policy hereinafter described. ATTN: Terry McGuire

3.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which the law of the state in which the Property is located provides is part of the Property, as well as the following items, if any, owned by Seller and presently located in the Property: electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, and all other improvements (collectively, the "Improvements").

3.4 If the Property is located in the State of California, the Broker(s) is/are required under the Alquist-Priolo Special Studies Zones Act, to disclose to a prospective purchaser of real property whether the property being purchased is located within a delineated special studies zone (a zone that encompasses a potentially or recently active trace of an earthquake fault that is deemed by the State Geologist to be sufficiently active and well defined enough to constitute a potential hazard to structures from surface faulting or fault creep). If the Property is located within such a special studies zone, its development may require a geologic report from a state registered geologist. In accordance with such law, the Broker(s) hereby inform(s) Buyer that the Property: ☒ (a) Is not within such a special studies zone.
☐ (b) Is within such a special studies zone.

4. Purchase Price.

4.1 The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be $ 8,600,000.00 payable as follows:

	(a) Cash down payment, including the Deposit as defined in paragraph 5.3 (or if an all cash transaction, the Purchase Price):	$ 8,600,000.00
(Strike if not applicable)	~~(b) Amount of "New Loan" as defined in paragraph 8.1, if any.~~	~~$~~
	(c) Buyer shall take title to the Property subject to the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)"):	
	(i) An Existing Note (the "First Note") with an unpaid principal balance as of the Closing of approximately:	$
(Strike if not applicable)	Said existing note is payable at $ _____ per month, including interest at the rate of _____% per annum until paid (and/or the entire unpaid balance is due on _____).	
	(ii) An Existing Note (the "Second Note") with an unpaid principal balance as of the Closing of approximately:	$
	Said Existing Note is payable at $ _____ per month, including interest at the rate of _____% per annum until paid (and/or the entire unpaid balance is due on _____).	
(Strike if not applicable)	(d) Buyer shall give Seller a deed of trust (the "Purchase Money Deed of Trust") on the Property, to secure the promissory note of Buyer to Seller described in paragraph 7 (the "Purchase Money Note") in the amount of:	$
	Total Purchase Price:	$ 8,600,000.00

Initials Initials

4.2 If an Existing Deed of Trust permits the beneficiary thereof to require payment of a transfer fee as a condition to the assumption of the Property subject to such Existing Deed of Trust, Buyer agrees to pay transfer fees and costs of up to one and one-half percent (1.5%) of the principal balance of the applicable Existing Note.

5. **Deposits.**

5.1 Buyer hereby delivers a check in the sum of $ 50,000, payable to Commerce Escrow, to be *(check applicable box)* ☐ forthwith deposited in the payee's trust account ☒ held uncashed until the Date of Agreement. When cashed, the check shall be deposited into the payee's trust account to be applied toward the Purchase Price of the Property at the Closing, as defined in paragraph 8.3. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

5.2 Within five (5) business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of $_____, to be applied to the Purchase Price at the Closing.

5.3 The funds deposited with Escrow Holder by or on behalf of Buyer under paragraphs 5.1 and 5.2 above (collectively the "Deposit"), shall be deposited by Escrow Holder in such State or Federally chartered bank as Buyer may select and in such interest-bearing account or accounts as Escrow Holder or Broker(s) deem appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is 36-3157784.

6. **Financing Contingency.** *(Strike if not applicable)*

6.1 This offer is contingent upon Buyer obtaining from an insurance company, bank, savings and loan association or other financial institution, or from any correspondent or agent thereof, a commitment to lend to Buyer a sum not less than $_____, at a fixed interest rate not to exceed _____% per annum, payable in equal monthly installments, including interest, amortized over a period of not less than _____ years and all due in not less than _____ years, or at a variable interest rate commencing at an interest rate not to exceed _____% per annum, amortized over a period of not less than _____ years and all due in not less than _____ years, and in either case, with loan fees not to exceed _____% of the amount of the new loan (the "New Loan"). The New Loan shall be secured by a first deed of trust upon the Property and shall be upon the following additional terms and conditions: _____

_____

_____

_____,

and upon such other terms and conditions as are usually required by such lender.

6.2 Buyer hereby agrees to diligently pursue obtaining the New Loan. If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing, that the New Loan has not been obtained within _____ days following the Date of Agreement, then it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived the New Loan contingency.

6.3 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in Paragraph 6.2 hereof, that Buyer has not obtained said New Loan, then this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of Buyer's Deposit and any other funds deposited by or for Buyer with Escrow Holder or Seller, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.

7. **Purchase Money Note.** *(Strike if not applicable)*

7.1 The Purchase Money Note shall provide for interest on unpaid principal at the rate of _____% per annum, with principal and interest to be paid as follows: _____

_____

_____

The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or New Loan expressly called for by this Agreement.

7.2 The Purchase Money Note and the Purchase Money Deed of Trust shall contain provisions regarding the following:

(a) *Prepayment.* Principal may be prepaid in whole or in part at any time without penalty, at the option of Buyer.

(b) *Late Charge.* A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within ten (10) days after it is due.

(c) *Due On Sale.* In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of the Purchase Money Note to be then paid in full.

8. **Escrow and Closing.**

8.1 Upon acceptance hereof by Seller, this Agreement, including any counter-offers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending this Agreement unless specifically so instructed by the Parties or a Broker herein.

8.2 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law, custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.3 Subject to satisfaction of the contingencies hereinafter described, Escrow Holder shall close this escrow (the "Closing") by recording the grant deed and other documents required to be recorded and by disbursing the funds and documents in accordance with this Agreement.

8.4 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.4, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of the breach of any affirmative covenant or warranty in this Agreement that may have been involved in the event of such termination. Buyer shall be promptly refunded all funds deposited by or on behalf of Buyer with a Broker, Escrow Holder or Seller less only Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.

8.5 The Closing shall occur on the Expected Closing Date (or such thereafter as the Escrow is in condition for Closing, provided, however, that if the Closing does not occur by the Expected Closing Date and the Expected Closing Date is not extended by mutual instructions of the Parties, a Party hereto not then in default under this Agreement may notify the other Party, Escrow Holder, and Broker(s), in writing that, unless the Closing occurs within five (5) business days following said notice, the Escrow and this Agreement shall be deemed terminated without further notice or instructions. If Escrow is brought into condition for Closing within said (5) day period, the Closing shall occur as soon as it is in condition to do.

8.6 Should the Closing not occur during said five (5) day period, this Agreement and Escrow shall be deemed terminated and Escrow Holder shall forthwith return all monies and documents, less only Escrow Holder's reasonable fees and expenses, to the Party who deposited them. Such Party shall indemnify and hold Escrow Holder harmless in connection with such return. However, no refunds or documents shall be returned to a party claimed by written notice to Escrow Holder to be in default under this Agreement. See addendum attached hereto and made a part hereof

8.7 Any return of deposited funds or documents shall not relieve or release either Buyer or Seller from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained herein.

8.8 If this Agreement terminates for any reason other than Seller's breach or default, then at Seller's request, and as a condition to the return of Buyer's deposit, Buyer shall within five (5) days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports and other similar items prepared by or for Buyer that pertain to the Property.

9. **Contingencies to Closing.**

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies:

(a) *Disclosure.* Buyer's receipt and writtten approval, within ten (10) days after delivery to Buyer, of a completed Property Information Sheet (the "Property Information Sheet"), concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the American Industrial Real Estate Association (the "A.I.R."). Seller shall provide Buyer with the Property Information Sheet within ten (10) days following the Date of Agreement.

(b) *Physical Inspection.* Buyer's written approval, within ten (10) days following the later of the Date of Agreement or receipt by Buyer of the Property Information Sheet, of an inspection by Buyer, at Buyer's expense, of the physical aspects of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer's written approval, within twenty (20) days following Completion & Receipt of the later of the Date of Agreement or receipt by Buyer of the Property Information Sheet, of a Hazardous Substance Conditions report such report concerning the Property and relevant adjoining properties. Such report will be obtained at Buyer's direction and expense. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

** As soon as possible after the satisfaction of all conditions contained in this Agreement but in no event later than EXPECTED CLOSING DATE. THE EXPECTED CLOSING shall not be extended except by mutual agreement of the parties.

Initials _____ Initials _____

~~(d) *Soil Inspection.* Buyer's written approval, within twenty (20) days after the later of the Date of Agreement or receipt by Buyer of the Property Information Sheet, of a soil test report concerning the Property. Said report shall be obtained at Buyer's direction and expense. Seller shall promptly provide to Buyer copies of any existing soils reports that Seller may have.~~

(e) *Condition of Title.* Buyer's written approval of a current preliminary title report concerning the Property (the "PTR") issued by the Title Company, as well as all documents (the "Underlying Documents") referred to in the PTR, and the issuance by the Title Company of the title policy described in 10.1. Seller shall cause the PTR and all Underlying Documents to be delivered to Buyer promptly after the Date of Agreement. Buyer's approval is to be given within ~~ten (10) days~~ (or twenty-one (21) days ~~if Buyer elects an ALTA survey under paragraph 9.1(f)~~) after receipt of said PTR and legible copies of all Underlying Documents. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this condition, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(f) *Survey.* Buyer's written approval, within twenty-one (21) days after receipt of the PTR and Underlying Documents, of an ALTA title supplement based upon a survey prepared to American Land Title Association (the "ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within ten (10) feet either side of the Property boundary lines. The survey shall be prepared at Buyer's direction and expense.

~~(g) *Existing Leases and Tenancy Statements.* Buyer's written approval, within ten (10) days after receipt of legible copies of all leases, subleases or rental arrangements (collectively the "Existing Leases") affecting the Property, and a statement (the "Tenancy Statement") in the latest form or equivalent to that published by the A.I.R., executed by Seller and each tenant and subtenant of the Property. Seller shall use its best efforts to provide Buyer with said Existing Leases and Tenancy Statements promptly after the Date of Agreement.~~

(h) *Other Agreements.* Buyer's written approval, within ten (10) days after receipt, of a copy of any other agreements ("Other Agreements") known to Seller that will affect the Property beyond the Closing. Seller shall cause said copies to be delivered to Buyer promptly after the Date of Agreement.

~~(i) *Financing.* If paragraph 6 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.~~

~~(j) *Existing Notes.* If paragraph 4.1(c) has not been stricken, Buyer's written approval, within ten (10) days after receipt, of conformed~~ and legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively the "Loan Documents") to which the Property will remain subject after the Closing, including a beneficiary statement (the "Beneficiary Statement") executed by the holders of the Existing Notes confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with said loan. Seller shall use its best efforts to provide Buyer with said Loan Documents and Beneficiary Statement promptly after the Date of Agreement. Buyer's obligation to close is further conditioned upon Buyer's being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided ~~in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 4.2 hereof.~~

(k) *Destruction, Damage or Loss.* There shall not have occurred prior to the Closing, a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than $10,000.00 to repair or cure. If the cost of repair or cure is $10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within ten (10) days after receipt of written notice of a loss costing more than $10,000.00 to repair or cure, to either terminate this transaction or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than $10,000.00, and Buyer does not elect to terminate this transaction, Buyer shall be entitled to any insurance proceeds applicable to such loss and the exclusive right to settle and dispose of such insurance claim(s). Unless otherwise notified in writing by either Party or Broker, Escrow Holder shall assume no destruction, damage or loss costing more than $10,000.00 to repair or cure has occurred prior to Closing.

(l) *Material Change.* No Material Change, as hereinafter defined, shall have occurred with respect to the Property that has not been approved in writing by Buyer. For purposes of this Agreement, a "Material Change" shall be a change in the status of the use, occupancy, tenants, or condition of the Property as reasonably expected by the Buyer, that occurs subsequent to the date of this offer. Buyer shall have ten (10) days following receipt of written notice from any source of any such Material Change within which to approve or disapprove same. Unless otherwise notified in writing by either Party or Broker, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(m) *Seller Performance.* The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(n) *Breach of Warranty.* That each representation and warranty of Seller herein be true and correct as of the Closing. Escrow Holder shall assume that this condition has been satisfied unless notified to the contrary in writing by Buyer or Broker(s) prior to the Closing.

(o) *Broker's Fee.* Payment at the Closing of such Broker's Fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Broker(s). It is agreed by Buyer, Seller and Escrow Holder that Broker(s) is/are a third party beneficiary of this Agreement insofar as the Broker's fee is concerned, and that no change shall be made by Buyer, Seller or Escrow Holder with respect to the time of payment, amount of payment, or the conditions to payment of the Broker's fee specified in this Agreement, without the written consent of Broker(s).

EXPECTED CLOSING DATE

9.2 If, within the applicable time period, Buyer disapproves any matter subject to Buyer's approval, ("Disapproved Item"), Seller shall have the right, within ten (10) days following receipt of notice of Buyer's said disapproval, to elect ("Seller's Election") to cure or not cure the Disapproved Item prior to the Closing. Seller's failure to give to Buyer within said ten (10) day period written notice of Seller's Election to cure any Disapproved Item shall be conclusively presumed to be Seller's Election not to cure such disapproved item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the election, within ten (10) days after Seller's Election to either accept title to the Property subject to that Disapproved item, or to terminate this transaction. Buyer's failure to elect termination by written notice to Seller within said ten (10) day period shall constitute Buyer's election to accept title to the Property subject to that Disapproved Item without deduction or offset. Unless the parties instruct otherwise, if the time periods for Seller's and Buyer's said Elections would expire on a date subsequent to the Expected Closing Date, the Expected Closing Date shall be deemed extended to coincide with the expiration of the period within which Seller may elect to cure the Disapproval Item, or, if Seller elects not to cure, the period within which Buyer may elect to terminate this transaction, as the case may be.

9.3 If Buyer shall fail, within the applicable time specified to approve or disapprove in writing to Escrow Holder, Seller and the other Party's Broker, any item, matter or document subject to Buyer's approval under the terms of this Agreement, it shall be conclusively presumed that Buyer has approved such item, matter or document. Buyer's conditional approval shall constitute a disapproval, unless provision is made by the Seller within the time specified therefor by the Buyer in the conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer.

9.4 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer and may be elsewhere herein referred to as "Buyer's Contingencies."

9.5 Buyer understands and agrees that until such time as all Buyer's Contingencies have been satisfied or waived, Seller and/or its agents may solicit, entertain and/or accept back-up offers to purchase the subject Property in the event the transaction covered by this Agreement is not consummated.

~~9.6 As defined in subparagraph 9.1(e), Buyer and Seller acknowledge that extensive local, state and Federal legislation establish broad~~ liability upon owners and/or users of real property for the investigation and remediation of a Hazardous Substance Condition. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Broker(s). Buyer and Seller acknowledge that they have been advised by Broker(s) to consult their own technical and legal experts with respect to the possible Hazardous Substance Condition aspects of this Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Broker(s) with respect thereto. Buyer and Seller hereby assume all responsibility for the impact of such ~~Hazardous Substance Conditions upon their respective interests herein.~~

10. Documents Required at Closing:

10.1 Escrow Holder shall cause to be issued to Buyer a standard coverage, owner's form, policy of title insurance, effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto. ~~In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.~~

10.2 Seller shall deliver or cause to be delivered to Escrow Holder in time for delivery to Buyer at the Closing, an original ink signed

(a) Grant deed (or equivalent), duly executed and in recordable form, conveying fee title to the Property to Buyer.

~~(b) If paragraph 4.1(c) has not been stricken, the Beneficiary Statements concerning Existing Note(s).~~

~~(c) [illegible] Existing Leases, together with duly executed assignments thereof by Seller to Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the A.I.R. or its equivalent.~~

~~(d) If applicable, the Tenancy Statements executed by Seller and the Tenant of the Property.~~

(e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least three (3) business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

10.3 Buyer shall deliver or cause to be delivered to Seller through escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement for prorations, expenses and adjustments. The balance of the cash portion of the Purchase Price, including Buyer's escrow charges and other cash charges, if any, shall be deposited by Buyer with Escrow Holder, by cashier's check drawn upon a local major banking institution, federal funds wire transfer, or any other method acceptable to Escrow Holder as immediately collectable funds, no later than 11:00 o'clock A.M. on the business day prior to the Expected Closing Date.

Initials

Initials

(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.

(c) The assumption portion of the Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.1(d), above, duly executed by Buyer with respect to the obligations of the Lessor accruing after the Closing as to each Existing Lease.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.

11. Prorations, Expenses and Adjustments.

11.1 *Taxes.* Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment shall be made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such proration. Seller shall pay and discharge in full at or before the Closing the unpaid balance of any special assessment bonds.

11.2 *Insurance.* If Buyer elects to take an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current premium therefor shall be prorated through Escrow as of the date of Closing.

11.3 *Rentals, Interest and Expenses.* Collected rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 Security Deposit. Security Deposits held by Seller shall be given to Buyer by a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

11.6 *Variations in Existing Note Balances.* In the event that Buyer is taking title to the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the Closing will be more or less than the amount set forth in paragraph 4.1(c) hereof (the "Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Puchase Money Note, the cash required at the Closing per Paragraph 4.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 *Variations In New Loan Balance.* In the event Buyer is obtaining a New Loan and in the event that the amount of the New Loan actually obtained is greater than the amount set forth in Paragraph 6.1 hereof, the Purchase Money Note, if one is called for in this transaction, shall be reduced by the excess of the actual face amount of the New Loan over such amount as designated in Paragraph 6.1 hereof.

11.8 *Escrow Costs and Fees.* Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance.

12. Representation and Warranties of Seller and Disclaimer.

12.1 Seller hereby makes the following warranties and representations to Buyer and Broker(s), which warranties and representations shall survive the Closing and delivery of the deed, and each of which, unless otherwise noted herein, is (a) material and reasonably relied upon by Buyer and Broker(s) and (b) true in all respects both as of the Date of Agreement and the date of Closing:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder. **

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in Paragraph 9.1(k) hereof dealing with destruction, damage or loss, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted. The heating, ventilating, air conditioning, plumbing, elevators, loading doors and electrical systems shall be in good operating order and condition at the time of the Closing.

(c) *Hazardous Substances/Storage Tanks.* Seller has no actual knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance (as defined in paragraph 9.1(c)), nor of the existence or prior existence of any above or below ground storage tank or tanks.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes, or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency, or of any casualty insurance company that any work of investigation, remediation, repair, maintenance or improvement is to be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify, orally or in writing, any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* To the best knowledge of Seller, no one will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanic's or materialman's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* To the best of Seller's knowledge, no actions, suits, or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality that would affect the Property or the right to occupy or utilize it.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Broker(s) in writing of any Material Change (as defined in paragraph 9.1(h)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy proceeding.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the Occupational Safety and Health Act, hazardous substance laws, or any other act, ordinance or law, have been made by either Party or Broker, or relied upon by either Party hereto.

13. Possession.

13.1 Possession of the Property, subject, however, to the rights of tenants under Existing Leases, shall be given to Buyer at the Closing.

14. Buyer's Entry.

14.1 At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction of any disrupted soil. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify and hold harmless Seller and the Property of and from any and all claims, demands, losses, costs, expenses (including reasonable attorneys' fees), damages or recoveries, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

15. Further Documents and Assurances.

15.1 Buyer and Seller shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. Buyer and Seller agree to provide all further information, and to execute and deliver all further documents and instruments, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

16.1 In the event of any litigation or arbitration between the Buyer, Seller, and Broker(s), or any of them, concerning this transaction, the prevailing party shall be entitled to reasonable attorneys' fees and costs. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred in good faith.

17. Prior Agreements/Amendments.

17.1 The contract in effect as of the Date of Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.

17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

18.1 If the sale shall not be consummated due to the default of Buyer, the Buyer shall be liable to and shall pay to Broker(s) the commission that Broker(s) would have received had the sale been consummated. This obligation of Buyer is in addition to any obligation with respect to liquidated damages.

18.2 Upon the Closing, Broker(s) is/are authorized to publicize the facts of this transaction.

**The conveyance of the properties from Seller to Buyer will not violate the provisions of the subdivision map act adopted by the State of California.

Initials

Initials

return receipt requested

19. Notices.

19.1 Whenever any Party hereto, Escrow Holder or Broker(s) herein shall desire to give or serve any notice, demand, request, approval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid, addressed as set forth adjacent to that party's or Broker's signature on this Agreement or by telecopy. Service of any such communication shall be deemed made on the date of actual receipt at such address. If delivered personally, and on the date of actual receip

19.2 Any Party or Broker hereto may from time to time, by notice in writing served upon the other Party as aforesaid, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made. ** as evidenced by t. return receipt of mail

20. Duration of Offer.

20.1 If this offer shall not be accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of Los Angeles on the date of August 26th @ 5:00 pm, it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counter-offer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counter-offer.

21. Liquidated Damages.

21.1 If this paragraph 21 is initialled by Buyer and Seller the liquidated damages provisions of this paragraph 21 shall be a part of this Agreement.

21.2 IT IS ACKNOWLEDGED BY THE PARTIES HERETO THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT, THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY SELLER IN THE EVENT OF BUYER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES (THE "LIQUIDATED DAMAGES") IN THE AMOUNT OF $ 25,000.00 PLUS THE INTEREST, IF ANY, ACCRUED ON THE LIQUIDATED DAMAGES PORTION OF BUYER'S DEPOSIT DURING THE ESCROW. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

_____ *Buyer Initials*

_____ *Seller Initials*

22. Arbitration.

22.1 Any controversy as to whether Seller is entitled to the Liquidated Damages and/or Buyer is entitled to the return of Deposit money, shall be determined by binding arbitration under the Commercial Rules of the American Arbitration Association (the "Commercial Rules"). Hearings on such arbitration shall be held in the county where the Property is located.

22.2 Any such controversy shall be arbitrated by three (3) arbitrators who shall be impartial real estate brokers with at least five full time years of experience in the area where the Property is located in the type of real estate that is the subject of this Agreement and shall be appointed under the Commercial Rules. The arbitrators shall hear and determine said controversy in accordance with applicable law and the intention of the parties as expressed in this Agreement, as the same may have been duly modified in writing by the Parties prior to the arbitration upon the evidence produced at an arbitration hearing scheduled at the request of either Buyer or Seller.

22.3 Such pre-arbitration discovery shall be permitted as is authorized under the Commercial Rules or state law applicable to arbitration proceedings.

22.4 All awards shall be executed by at least two of the three arbitrators. The award shall be rendered within thirty (30) days after the conclusion of the hearing.

22.5 The award shall also include attorneys' fees and costs to the prevailing party. Judgment may be entered on the award in any court of competetent jurisdiction notwithstanding the failure of a Party duly notified of the arbitration hearing to appear thereat.

22.6 Buyer's resort to or participation in such arbitration proceeding shall not bar suit in a court of competent jurisdiction by the Buyer for damages and/or specific performance unless and until the arbitration results in an award to the Seller of liquidated damages, in which event such award shall act as a bar against any action by Buyer for damages and/or specific performance.

23. Applicable Law.

23.1 This Agreement shall be governed by the laws of the state in which the Property is located.

24. Time of Essence.

24.1 Time is of the essence of this Agreement.

25. Counterparts.

25.1 This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

26. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

26.1 The Parties and Broker(s) agree that their relationship(s) shall be governed by the principles set forth in California Civil Code, Section 2375, as summarized in the following paragraph 26.2.

26.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Broker(s) in this transaction, as follows:

(a) *Seller's Agent.* A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skill and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) *Buyer's Agent.* A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skill and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) *Agent Representing Both Seller and Buyer.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer (1) *In a dual agency situation,* the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 26.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect [illegible] and Seller [illegible] that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure.

(e) *Confidential Information.* Buyer and Seller agree to identify to Broker(s) as "Confidential" any communication or information given Broker(s) that is considered by such Party to be confidential.

27. Additional Provisions:

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum consisting of paragraphs 29 through 35. (It will be presumed no other provisions are included unless specified here.)

See addendum attached hereto and made a part hereof.

_____ Initials

_____ Initials

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BUYER AND SELLER HEREBY ACKNOWLEDGE THAT THEY HAVE BEEN AND ARE NOW ADVISED BY THE BROKER(S) TO CONSULT AND RETAIN THEIR OWN EXPERTS TO ADVISE AND REPRESENT THEM CONCERNING THE LEGAL AND INCOME TAX EFFECTS OF THIS AGREEMENT, AS WELL AS THE CONDITION AND/OR LEGALITY OF THE PROPERTY, THE IMPROVEMENTS AND EQUIPMENT THEREIN, THE SOIL THEREOF, THE CONDITION OF TITLE THERETO, THE SURVEY THEREOF, THE ENVIRONMENTAL ASPECTS THEREOF, THE INTENDED AND/OR PERMITTED USAGE THEREOF, THE EXISTENCE AND NATURE OF TENANCIES THEREIN, THE OUTSTANDING OTHER AGREEMENTS, IF ANY, WITH RESPECT THERETO, AND THE EXISTING OR CONTEMPLATED FINANCING THEREOF, AND THAT THE BROKER(S) IS/ARE NOT TO BE RESPONSIBLE FOR PURSUING THE INVESTIGATION OF ANY SUCH MATTERS UNLESS EXPRESSLY OTHERWISE AGREED TO IN WRITING BY BROKER(S) AND BUYER OR SELLER.

THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.

If this Agreement has been filled in it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the real estate Broker(s) or their agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Agreement or the transaction involved herein.

BROKER:

The Seeley Company

By _____ Date 8-23-88

Name Printed: Drexel W. Chapman, Jr.

Title: Agent

20300 S. Vermont Ave., Suite 200
Address

Torrance, CA 90510

213/538-3182 Telephone

213/329-3344 Telecopier No.

BUYER:

Coca-Cola Bottling Company Of Los Angeles

By _____ Date 11/3/88

Name Printed: Fred M. Robinson

Title: Vice President

1334 S. Central Avenue
Address

Los Angeles, CA 90021

_____ Telephone

_____ Telecopier No.

28. Acceptance.

28.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

28.2 Seller acknowledges that Broker(s) has/have been retained to locate a Buyer and is/are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Broker(s), Seller agrees to pay Broker(s) a real estate brokerage fee in a sum equal to * _____% of the Purchase Price (the "Broker's Fee") divided equally in such shares as said Brokers shall direct in writing. As is provided in paragrapah 9.1(o), this Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such brokerage fee to Broker(s) out of the proceeds accruing to the account of Seller at the Closing.

28.3 Seller acknowledges receipt of a copy hereof and authorizes the Broker(s) to deliver a signed copy to Buyer.

*per The Seeley Company schedule

BROKER:

_____

By: _____ /Date _____

Name Printed: _____

Title: _____

_____
Address

_____ Telephone

_____ Telecopier No.

SELLER:

_____

By: _____ /Date _____

Name Printed: _____

Title: _____

_____
Address

_____ Telephone

_____ Telecopier No.

ADDENDUM TO STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE
IN CARSON, CALIFORNIA
DATED AUGUST 22, 1988

29. ADDITIONAL CONDITIONS

Not withstanding any other provision of this agreement Buyer shall have the right to disapprove any of the "Buyer's Contingencies" on or before the date which is 30 days after the date of this agreement ("THE CONTINGENCY DATE"). In addition, Buyer's approval on or before the CONTINGENCY DATE of the following shall constitute conditions precedent to the performance of each of Buyer's obligations hereunder:

(a) The condition of the Property and any improvements, fixtures, appurtenances and equipment located thereon or affixed thereto;

(b) A soils report, obtained at Buyer's sole cost and expense, concerning the Property;

(c) The results of an investigation conducted by Buyer into the nature and extent of laws, rules, regulations and ordinances affecting to use and development of the Property by Buyer, approvals likely to be imposed by governmental agencies in connection with such development; and

(d) The availability of all necessary internal approvals to purchase and improve Property.

The granting of any approval described in this paragraph shall be within Buyer's sole and absolute discretion. In the event that Buyer shall not deliver to Escrow Holder, within thirty (30) days from the date of opening of the Escrow, a statement in writing that all of the conditions set forth in this paragraph have either been satisfied or waived, then this Agreement and all of the obligations of Buyer to Seller in connection with this Agreement shall be terminated. The Escrow Holder shall then immediately return the Deposit to Buyer, less one-half (1/2), title company and Escrow Holder cancellation fees and costs, and Buyer and Seller shall execute such instruments and documents as may be necessary or appropriate to cancel the Escrow.

30. PURCHASE PRICE DETERMINATION

Notwithstanding anything to the contrary contained in Paragraph 4.1, the parties hereto agree that the Purchase Price amount set forth in Paragraph 4.1 is based on the representation by Seller to Buyer that the property is a parcel of 7.47 acres in area. In the event that Buyer has prepared, at its sole cost and expense, a survey of the property by a licensed land surveyor or a civil engineer, and such survey determines a usable area of the property less than 7.47 acres, then the Purchase Price shall be adjusted on the basis of value of $26.43 per square foot of usable

31. REPORTS AND MATERIALS

Seller shall deliver to Buyer, within then (10) days of opening of the Escrow, copies of all studies, reports, information and other material in Seller's possession relating to the condition of the property or of potential benefit to Buyer in Buyer's evaluation of the property, including without limitation all soils reports, toxic and hazardous substance reports and studies, and surveys.

Initials

Initials

32. ASSESSMENTS

Seller shall pay all assessments relating to the property prior to the close of the Escrow.

33. ASSIGNMENT

Buyer shall have the right to assign this Agreement and all of Buyer's rights hereunder, without Seller's prior consent, provided that the assignee assumes all obligations of Buyer under this Agreement.

34. HAZARDOUS SUBSTANCES

Seller herby agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to Buyer) Buyer, its directors, officers, employees, agents, successors, and assignees from and against any and all claims, losses, damages, liabilities, fines, penalties' charges, administrative and judicial proceedings and orders, judgements, enforcement actions of any kind, and all costs and expenses incurred therewith, arising out of (a) the presence on or under the Property of any Hazardous Substances, or any releases or discharges of any Hazardous Substances, on or under the property, or (b) any activity carried on or undertaken on or off the Property prior to the Closing, whether by Seller or any predecessor in title, or any employees, agents, contractors of Seller or any predecessor in title, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances located on or under the Property.

35. CANCELLATION OF ESCROW

(a) In the event that the Closing does not occur at the time and in the manner provided in this Agreement, due to the material failure of Buyer to comply with its obligations under this Agreement, Seller shall have the right to cancel the Escrow by written notice to the Escrow Holder, and upon such cancellation all costs of the Escrow and all title company cancellation fees shall be paid by Buyer.

(b) In the event that the Closing does not occur at the time and in the manner provided in this Agreement due to the material failure of Seller to comply with its obligations under this Agreement, Buyer shall have the right to cancel the Escrow by written notice to the Escrow Holder, and upon such cancellation all costs of the Escrow and all title company cancellation fees shall be paid by Seller.

BUYER

BY: _____

DATE: 4/23/08

SELLER

BY: _____

DATE: _____

COCA-COLA BOTTLING COMPANY OF LOS ANGELES • 1334 SOUTH CENTRAL AVENUE, LOS ANGELES, CA 90021 • 213 748 6555

CCLA

Drexel Chapman
The Seeley Company
20300 Vermont Avenue, Suite 200
Torrance, California 90510

September 2, 1988

Re: 19899 Pacific Gateway Drive, Los Angeles - "The Property"

Dear Drexel:

In Response to the letter from Mr. F. Ronald Rader dated August 29, 1989 ("New Offer") following are the revised business points under which the Coca-Cola Bottling Company of Los Angeles (CCLA) would be willing to enter into a Purchase and Sale agreement on The Property.

1. Purchase price to be $9,075,000.

2. Payment of the purchase price shall be as follows:

   a. $150,000 to be deposited in escrow upon execution of a purchase contract. After the contingency period expires, the deposit would become non-refundable, if CCLA removes the contingencies.

   b. Liquidated damages - After the expiration of the contingency period, the $150,000 deposited by CCLA into escrow would constitute liquidated damages in the event of default by CCLA.

   c. Balance of purchase price to be cash upon close of escrow.

3. Closing to be 45 days after receipt of mutually agreed upon and signed escrow instructions by both buyer and seller.

4. Contingency Period to be 30 days after receipt of mutually agreed to and signed escrow instructions.

5. Closing costs would be in accordance with custom in Southern California, except that CCLA will pay the difference in the cost between an ALTA and CLTA title insurance policy.

If the above terms are acceptable to Maurices, please let me know and a formal purchase contract will be prepared.

Sincerely,

MJ Fowler

Director Operations Planning
CCLA

002 00059

FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF PROPERTY AND ESCROW INSTRUCTIONS

This First Amendment to Agreement for Purchase and Sale of Property and Escrow Instructions (this "Amendment") is made and entered into as of October 21, 1988, by and between AMCENA PROPERTIES, INC., a California corporation ("Seller"), COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation ("Purchaser") and COMMERCE ESCROW COMPANY, a California corporation ("Escrow Agent").

RECITALS

A. Seller and Purchaser have previously entered into that certain Agreement for Purchase and Sale of Property and Escrow Instructions (the "Purchase Agreement") dated as of September 23, 1988, for the sale of certain real property located at 19899 Pacific Gateway Drive in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described in the Purchase Agreement (the "Property"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

B. In connection with Purchaser's environmental assessment of the Property, Purchaser has received certain reports ("Preliminary Environmental Assessments") from its environmental consultants, Stoney-Miller Consultants, Inc. and Drucker Health & Safety Management, Inc., indicating the presence of asbestos and subsurface petroleum hydrocarbons on the Property. In light of such preliminary findings, Purchaser requires additional time to complete the environmental assessment of the Property.

C. Purchaser has received that certain Preliminary Title Report No. 86-33747-20 covering the Property, issued by Commonwealth Land Title Company and dated as of September 14, 1988 (the "Title Report"), together with copies of all recorded instruments referenced therein. Purchaser requires additional time to complete its assessment of the impact of the various exceptions listed in the Title Report (including without limitation, recorded restrictions as to required setbacks, easements and other restrictions upon future building) upon Purchaser's proposed improvement plans for the Property.

D. Section 8.1 of the Purchase Agreement contains certain Contingency Periods within which Purchaser must either approve or waive certain Contingency Matters, including without limitation environmental and title matters relating to the Property. Seller and Purchaser desire to extend certain of such Contingency Periods for one additional 30-day period to enable Purchaser to complete the assessment of the Property and all Contingency Matters.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Purchaser and Escrow Agent hereby agree as follows:

1. Contingency Matters. Each of the Contingency Periods set forth in Sections 8.1(a), 8.1(b), 8.1(d) and 8.1(e) shall be extended for an additional 30 days, or until November 23, 1988. As of the date hereof, Purchaser has approved of the Contingency Matter set forth in Section 8.1(c). As of the date hereof, Purchaser has not approved or waived any of the Contingency Matters set forth in Sections 8.1(a), 8.1(b), 8.1(d) or 8.1(e). With respect to the Contingency Matters set forth in Sections 8.1(a) and 8.1(d), Purchaser requires the additional 30-day period in order to evaluate the condition of the soils and presence of hazardous materials contamination as disclosed in the Preliminary Environmental Assessments. With respect to the Contingency Matter set forth in Section 8.1(b), Purchaser requires the additional 30-day period in order to evaluate the title exceptions listed as Item Nos. 2, 3, 5, 10 and 11 in the Title Report, which impose restrictions on future building upon the Property that may interfere with Purchaser's intended use of the Property. With respect to the Contingency Matter set forth in Section 8.1(e), Purchaser's Board of Directors will not approve the entry of Purchaser into the Purchase Agreement and the transactions contemplated thereby unless and until Purchaser is able to approve of all Contingency Matters in Sections 8.1(a), 8.1(b), 8.1(c), 8.1(d) and 8.1(e).

2. Close of Escrow. As a result of the extension of Contingency Periods set forth in Section 1, above, the Close of Escrow shall be extended for an additional 30 days to December 7, 1988, subject to the satisfaction or waiver of all conditions to the Close of Escrow set forth in the Purchase Agreement. This 30-day extension of the Close of Escrow is made pursuant to Section 6.1.1 of the Purchase Agreement, and Escrow Agent hereby acknowledges receipt of Purchaser's $75,000 earnest money deposit into escrow in accordance with Section 6.1.1.

3. Preliminary Title Report. The term "Preliminary Title Report" defined in Section 9 of the Purchase Agreement is hereby amended to mean the "Title Report" as defined in Recital C of this Amendment.

4. Counterparts. This Amendment may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

5. Full Force and Effect. Except as modified by this Amendment, the Purchase Agreement shall remain unmodified and in full force and effect.

This Amendment is made and executed as of the date first above written.

SELLER:

AMCENA PROPERTIES, INC.,
a California corporation

By _____

Vice President PAUL BRUNZ
(Print Name and Title)

By _____

Assistant Secretary
(Print Name and Title)

PURCHASER:

COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation

By _____

Vice-President
(Print Name and Title)

ESCROW AGENT:

COMMERCE ESCROW COMPANY, a
California corporation

By_____

_____
(Print Name and Title)

SECOND AMENDMENT TO
AGREEMENT FOR PURCHASE
AND SALE OF PROPERTY AND
ESCROW INSTRUCTIONS

This Second Amendment to Agreement for Purchase and Sale of Property and Escrow Instructions (this "Amendment") is made and entered into as of December 14, 1988, by and between AMCENA PROPERTIES, INC., a California corporation ("Seller"), COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation ("Purchaser").

RECITALS

A. Seller and Purchaser have previously entered into that certain Agreement for Purchase and Sale of Property and Escrow Instructions dated as of September 23, 1988, as amended by that certain First Amendment to Agreement for Purchase and Sale and Escrow Instructions dated as of October 21, 1988 (collectively, the "Purchase Agreement") for the sale of certain real property located at 19899 Pacific Gateway Drive in the City of Los Angeles, County of Los Angeles, State of California and more particularly described in the Purchase Agreement (the "Property"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

B. As part of its environmental assessment of the Property pursuant to the Purchase Agreement, Purchaser retained Stoney-Miller Consultants, Inc. ("Stoney-Miller") to evaluate the environmental aspects of the Property. In a report dated November 16, 1988, Stoney-Miller concluded that the area of the Property outside the perimeter of the building is contaminated with hazardous substances which requires remediation.

C. Purchaser and Seller desire to make arrangements for the remediation of hazardous substances on the Property and to provide for response action needed to clean-up the Property.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Approval of Contingency Matters.

As of the date hereof, Purchaser hereby approves of all of the contingency matters.

2. Response Costs - Outside of Building Perimeter.

2.1 Upon the close of escrow, Seller will pay the Purchaser the sum of $300,000.00 as and for response costs to remediate and remove hazardous and/or toxic substances or materials ("Hazardous Substances") found on the portion of the Property outside the perimeter of the building. The sum of $300,000.00 is full and final satisfaction and in full settlement as to any liablity on the part of the Seller to Purchaser as to any Hazardous Substances found or which may be found in that portion of the Property outside of the perimeter of the building. Upon payment of said sum, the Seller shall have no further liability to the Purchaser for any further costs of response for any Hazardous Substances found on the Property outside the perimeter of the building.

2.2 The Purchaser will proceed with remediation of the Hazardous Substances in the soil outside the perimeter of the existing structure which have been identified in the Stoney-Miller report dated November 16, 1988 (the "Stoney-Miller Report"). If and to the extent that Seller's payment of $300,000 to Purchaser as hereinabove provided shall be insufficient to pay the full amount of the response costs required to remediate and remove such Hazardous Substances, Purchaser agrees to be responsible for and to pay all additional sums required and to indemnify and hold harmless Seller from any liability therefor.

2.3 The Seller and the Purchaser shall have the right to prosecute any claims against any parties responsible for the presence of Hazardous Substances outside the perimeter of the building to recover damages and other available remedies in respect of the Hazardous Substances in soil under such portion of the Property which has been identified in the Stoney-Miller Report. Any action initiated by either party may be joined in by the other. The Seller and the Purchaser shall each have the right, to the extent allowed by applicable law, to recover from the defendants in any such action, in addition to damages and other remedies allowable, their respective costs of litigation, including court costs, attorneys' fees and expenses. To the extent necessary to allow the Seller to bring or join in any such action, the Purchaser shall assign to the Seller its rights as owner of the Property, but only with respect to the first $300,000.00 of liability which is established in all such actions. As between the Purchaser and the Seller, the first $300,000.00 (plus recoverable costs of litigation incurred by Seller) recovered in any and all such actions shall be assigned to, and recoverable by, the Seller, in reimbursement of its payment to the Purchaser pursuant to paragraph 2.1. The entire balance of amounts recovered in any and all such

actions, together with any other injunctive or other remedies ordered in any such actions, shall be the property of the Purchaser.

3. Indemnity for Response Costs - Within Building Perimeter.

3.1 Should the Purchaser demolish the building and discover the presence of Hazardous Substances in the soil within the building's perimeter, the Seller does hereby agree to reimburse and indemnify the Purchaser for the necessary response costs it actually incurs in removal, remediation or other response with respect to such Hazardous Substances, up to but not exceeding $300,000.00. Payments to Purchaser hereunder for response costs shall be made promptly upon presentation to Seller of receipted invoices or other evidence of payment by Purchaser of such response costs. This indemnity is in full satisfaction of any and all liability on the part of the Seller for any Hazardous Substances which may be found within the perimeter of the building. Seller shall not be liable to Purchaser for any response costs for any Hazardous Substances within the perimeter of the building that exceed $300,000.00. If and to the extent that Seller's reimbursement to Purchaser for response costs as hereinabove provided shall be insufficient to pay the full amount of the response costs required to remediate and remove such Hazardous Substances, Purchaser agrees to be responsible for and to pay all additional sums required and to indemnify and hold harmless Seller from any liability therefor.

3.2 The Seller and the Purchaser shall have the right to prosecute any claims against any parties responsible for the presence of Hazardous Substances in the soil within the building's perimeter, to recover damages and other available remedies in respect thereof. Any action initiated by either party may be joined in by the other. The Seller and the Purchaser shall each have the right, to the extent allowed by applicable law, to recover from the defendants in any such action, in addition to damages and other remedies allowable, their respective costs of litigation, including court costs, attorneys' fees and expenses. To the extent necessary to allow the Seller to bring or join in any such action, the Purchaser shall assign to the Seller its rights as owner of the Property, but only with respect to the costs actually reimbursed by the Seller pursuant to paragraph 3.1. As between the Purchaser and the Seller, the first sums recovered in any and all such actions shall be assigned to, and recoverable by, the Seller, to the extent of, and in reimbursement of, any costs actually reimbursed by the Seller pursuant to paragraph 3.1 (plus recoverable costs of litigation incurred by Seller). The entire balance of amounts recovered in any and all such

actions, together with any injunctive or other remedies ordered in any such actions, shall be the property of the Purchaser.

3.3 The Purchaser's right to make a claim for indemnification under this Agreement for response costs incurred in remediating the area within the perimeter of the building will expire and cease to exist if it is not made in writing, within nine (9) months from the date the Purchaser obtains a permit from the appropriate governmental authority to demolish the existing building or within eighteen (18) months from the date of closing, whichever date is earlier. The Seller shall not be liable for and is not required to indemnify the Purchaser for any claims made after the time period described above.

This Amendment is made and executed as of the date first-above written.

SELLER:

AMCENA PROPERTIES, INC.,
a California corporation

By: _____

PURCHASER:

COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation

By: _____

002 00142

SHEA & GOULD

1800 AVENUE OF THE STARS-SUITE 500

LOS ANGELES, CALIFORNIA 90067

(213) 277-6000

TELEX 910 490-2597

CABLE SHEGOU

TELECOPIER (213) 553-4647

WRITER'S DIRECT LINE

(213) 284-7549

December 16, 1988

BY MESSENGER

Mr. Matt Fanoe
Director of Operations
Coca-Cola Bottling Company of Los Angeles
1334 South Central Avenue
Los Angeles, CA 90021

Re: **19899 Pacific Gateway Drive**

Dear Mr. Fanoe:

Pursuant to the request of your attorney, Robert Williams, we are enclosing herewith five copies of the Second Amendment to the Agreement and Escrow Instructions respecting the sale of the above-referenced property to Coca-Cola. A counterpart of this Second Amendment is being signed by Amcena and an executed copy will be deposited in the Escrow. I would request that you sign and return four copies to me and I will arrange to have a signed copy deposited in the Escrow and a copy executed by Amcena delivered to your counsel.

A copy of this letter and an copy of the enclosure is being concurrently delivered to your counsel.

Sincerely,

DANIEL M. HERSCHER

DMH:mk
Enclosures

cc: Robert E. Williams, Esq. (w/enc.)

002 00076

SECOND AMENDMENT TO
AGREEMENT FOR PURCHASE
AND SALE OF PROPERTY AND
ESCROW INSTRUCTIONS

This Second Amendment to Agreement for Purchase and Sale of Property and Escrow Instructions (this "Amendment") is made and entered into as of December 14, 1988, by and between AMCENA PROPERTIES, INC., a California corporation ("Seller"), COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation ("Purchaser").

RECITALS

A. Seller and Purchaser have previously entered into that certain Agreement for Purchase and Sale of Property and Escrow Instructions dated as of September 23, 1988, as amended by that certain First Amendment to Agreement for Purchase and Sale and Escrow Instructions dated as of October 21, 1988 (collectively, the "Purchase Agreement") for the sale of certain real property located at 19899 Pacific Gateway Drive in the City of Los Angeles, County of Los Angeles, State of California and more particularly described in the Purchase Agreement (the "Property"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

B. As part of its environmental assessment of the Property pursuant to the Purchase Agreement, Purchaser retained Stoney-Miller Consultants, Inc. ("Stoney-Miller") to evaluate the environmental aspects of the Property. In a report dated November 16, 1988, Stoney-Miller concluded that the area of the Property outside the perimeter of the building is contaminated with hazardous substances which requires remediation.

C. Purchaser and Seller desire to make arrangements for the remediation of hazardous substances on the Property and to provide for response action needed to clean-up the Property.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Approval of Contingency Matters.

As of the date hereof, Purchaser hereby approves of all of the contingency matters.

2. Response Costs - Outside of Building Perimeter.

2.1 Upon the close of escrow, Seller will pay the Purchaser the sum of $300,000.00 as and for response costs to remediate and remove hazardous and/or toxic substances or materials ("Hazardous Substances") found on the portion of the Property outside the perimeter of the building. The sum of $300,000.00 is full and final satisfaction and in full settlement as to any liablity on the part of the Seller to Purchaser as to any Hazardous Substances found or which may be found in that portion of the Property outside of the perimeter of the building. Upon payment of said sum, the Seller shall have no further liability to the Purchaser for any further costs of response for any Hazardous Substances found on the Property outside the perimeter of the building.

2.2 The Purchaser will proceed with remediation of the Hazardous Substances in the soil outside the perimeter of the existing structure which have been identified in the Stoney-Miller report dated November 16, 1988 (the "Stoney-Miller Report"). If and to the extent that Seller's payment of $300,000 to Purchaser as hereinabove provided shall be insufficient to pay the full amount of the response costs required to remediate and remove such Hazardous Substances, Purchaser agrees to be responsible for and to pay all additional sums required and to indemnify and hold harmless Seller from any liability therefor.

2.3 The Seller and the Purchaser shall have the right to prosecute any claims against any parties responsible for the presence of Hazardous Substances outside the perimeter of the building to recover damages and other available remedies in respect of the Hazardous Substances in soil under such portion of the Property which has been identified in the Stoney-Miller Report. Any action initiated by either party may be joined in by the other. The Seller and the Purchaser shall each have the right, to the extent allowed by applicable law, to recover from the defendants in any such action, in addition to damages and other remedies allowable, their respective costs of litigation, including court costs, attorneys' fees and expenses. To the extent necessary to allow the Seller to bring or join in any such action, the Purchaser shall assign to the Seller its rights as owner of the Property, but only with respect to the first $300,000.00 of liability which is established in all such actions. As between the Purchaser and the Seller, the first $300,000.00 (plus recoverable costs of litigation incurred by Seller) recovered in any and all such actions shall be assigned to, and recoverable by, the Seller, in reimbursement of its payment to the Purchaser pursuant to paragraph 2.1. The entire balance of amounts recovered in any and all such

actions, together with any other injunctive or other remedies ordered in any such actions, shall be the property of the Purchaser.

3. Indemnity for Response Costs - Within Building Perimeter.

3.1 Should the Purchaser demolish the building and discover the presence of Hazardous Substances in the soil within the building's perimeter, the Seller does hereby agree to reimburse and indemnify the Purchaser for the necessary response costs it actually incurs in removal, remediation or other response with respect to such Hazardous Substances, up to but not exceeding $300,000.00. Payments to Purchaser hereunder for response costs shall be made promptly upon presentation to Seller of receipted invoices or other evidence of payment by Purchaser of such response costs. This indemnity is in full satisfaction of any and all liability on the part of the Seller for any Hazardous Substances which may be found within the perimeter of the building. Seller shall not be liable to Purchaser for any response costs for any Hazardous Substances within the perimeter of the building that exceed $300,000.00. If and to the extent that Seller's reimbursement to Purchaser for response costs as hereinabove provided shall be insufficient to pay the full amount of the response costs required to remediate and remove such Hazardous Substances, Purchaser agrees to be responsible for and to pay all additional sums required and to indemnify and hold harmless Seller from any liability therefor.

3.2 The Seller and the Purchaser shall have the right to prosecute any claims against any parties responsible for the presence of Hazardous Substances in the soil within the building's perimeter, to recover damages and other available remedies in respect thereof. Any action initiated by either party may be joined in by the other. The Seller and the Purchaser shall each have the right, to the extent allowed by applicable law, to recover from the defendants in any such action, in addition to damages and other remedies allowable, their respective costs of litigation, including court costs, attorneys' fees and expenses. To the extent necessary to allow the Seller to bring or join in any such action, the Purchaser shall assign to the Seller its rights as owner of the Property, but only with respect to the costs actually reimbursed by the Seller pursuant to paragraph 3.1. As between the Purchaser and the Seller, the first sums recovered in any and all such actions shall be assigned to, and recoverable by, the Seller, to the extent of, and in reimbursement of, any costs actually reimbursed by the Seller pursuant to paragraph 3.1 (plus recoverable costs of litigation incurred by Seller). The entire balance of amounts recovered in any and all such

actions, together with any injunctive or other remedies ordered in any such actions, shall be the property of the Purchaser.

3.3 The Purchaser's right to make a claim for indemnification under this Agreement for response costs incurred in remediating the area within the perimeter of the building will expire and cease to exist if it is not made in writing, within nine (9) months from the date the Purchaser obtains a permit from the appropriate governmental authority to demolish the existing building or within eighteen (18) months from the date of closing, whichever date is earlier. The Seller shall not be liable for and is not required to indemnify the Purchaser for any claims made after the time period described above.

This Amendment is made and executed as of the date first-above written.

SELLER:

AMCENA PROPERTIES, INC.,
a California corporation

By: _____

PURCHASER:

COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation

By: _____

ALTA OWNER'S POLICY

ISSUED BY

COMMONWEALTH LAND TITLE INSURANCE COMPANY

PHILADELPHIA, PENNSYLVANIA

SCHEDULE A

Policy/File Number: 86-33747-20

Amount of Insurance: $9,200,000.00
Premium: $10,864.50
Date of Policy: December 20, 1988 at 2:01 p.m.

1. Name of Insured:

   COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation

2. The estate or interest in the land described herein and which is covered by this policy is:

   a fee

3. The estate or interest referred to herein is at Date of Policy vested in:

   COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware corporation

4. The land referred to in this policy is situated in the County of Los Angeles, State of California, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

86-33747

EXHIBIT "A"

The land referred to in this policy is situated in the County of Los Angeles, State of California, and is more particularly described as follows:

Parcel C, as shown on "Parcel Map - L.A. No. 3041", in the County of Los Angeles, State of California, as filed in Book 61, at Pages 81 and 82, of Parcel Maps, in the office of the County Recorder of said County.

86-33747

SCHEDULE B

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF THE FOLLOWING:

1. Second installment general and special taxes for the fiscal year 1988-1989, in the amount of $28,244.32.

Code: 510
Parcel: 7351-34-57

1a. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. A Covenant and Agreement, executed by CC&F Western Development Company, Inc., in favor of the City of Los Angeles, and recorded January 24, 1975 as Instrument No. 2983 in Book M-4902 Page 374, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

Said first party covenants and agrees to and with said City of Los Angeles to submit four copies of a plot plan over that above described property to the Fire Department for approval and review, prior to the issuance of building permits.

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect unless otherwide released by authority of the Fire Department of the City of Los Angeles.

3. A Covenant and Agreement, executed by CC&F Western Development Company, Inc., in favor of the City of Los Angeles, and recorded January 24, 1975 as Instrument No. 2984 in Book M-84902 Page 367, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

Said first party covenants and agrees to and with said City of Los Angeles to sumbit four copies of a parking area and driveway plan over the above described property to the appropriate district office of the Bureau of Engineering for approval and for coordination and review of the Traffic Department and the Department of Building and Safety, prior to the issuance of building permits.

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect unless otherwise released by authority of the Bureau of Engineering of the City of Los Angeles.

4. Covenants, conditions and restrictions (deleting therefrom any restrictions based on race, color or creed), as provided in a document recorded March 28, 1975 as Instrument No. 3857, Official Records.

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value.

Said covenants, conditions and restrictions were purportedly modified by an instrument recorded September 26, 1975 as Instrument No. 684, in Book M-5124 Page 766; September 26, 1975 as Instrument No. 690 in Book M-5124 Page 813, Official Records; June 14, 1977 as Instrument No. 77-621940, Official Records and June 14, 1977 as Instrument No. 77-621943, Official Records.

5. A Covenant and Agreement, executed by C.C & F. Western Development Co., Inc., in favor of the City of Los Angeles, and recorded September 23, 1975 as Instrument No. 3724 in Book M-5121 Page 343, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

In consideration of the issuance by the City of Los Angeles of a Building permit for the construction of an oversized building of said property, we do hereby covenant and agree to and with said City, pursuant to Section 91.0506 (K) of the Los Angeles Municipal Code, to maintian on said property, a yard of 60 feet in width, unobstructed from ground to sky, as shown on the attached plot plan.

This covenant and agreement shall run with the land and shall be binding upon ourselves, any future owners encumbrancers, their successors, heirs or assignees and shall continue in effect so long as said oversized building shall remain thereon and unless otherwise released by authority of the Superintendent of Building of the City of Los Angeles.

6. An easement for railroad, transportation and community purposes and incidental purposes in favor of Southern Pacific Transportation Company, a Delaware corporation, as provided in a document recorded March 2, 1976 as Instrument No. 561, Official Records.

Affects: that portion of said land described as follows:

That certain real property situated in the City of Los Angeles, County of Los Angeles, State of California said property being that portion of the following described strip of land which lies within Lot 1 as said Lot is shown on that certain map entitled "Tract No. 32036" recorded in Book 851 Pages 12, 13 and 14, Official Records of said County, being more particularly described as a strip of land 25 feet in width lying 10 feet Westerly and 15 feet Easterly of the portion of the following described line which lies within said Lot 1.

Beginning at the point of intersection of the Northerly line of said Lot 1 with a line parallel with and perpendicularly distant 15.00 feet Easterly of the Westerly line of said Lots 1 and 6; thence from said point of beginning

Southerly along said parallel line South 0° 04' 36" East 335.00 feet to the true point of beginning of the property herein described:

Thence from said true point of beginning and continuing on said parallel line South 0° 04' 36" East 1932.76 feet; thence tangent to the preceding course in the arc of a curve to the left having a radius of 385.24 feet a central angle of 8° 57' 55" an arc distance of 60.28 feet; thence non-tangent to the preceding curve South 10° 59' 47" East 87.96 feet; thence non-tangent to the preceding course from a tangent which bears South 9° 02' 31" East Southerly on the arc of a curve to the right having a radius of 338.27 feet and a central angle of 13° 38' 41" an arc length of 8056 feet to the Southerly line of said Lot 6; thence continuing on said 338.27 foot radius curve through a central angle of 78° 54' 46" an arc length of 465.89 feet; thence tangent to the preceding curve South 83° 30' 56" West 50.00 feet to an intersection with a line parallel with and perpendicularly distant 15.00 feet Northerly of the Southerly line of Lot 12 as said Southerly line is shown on that certain map entitled Tract No. 4671 recorded in Book 56 at Pages 30 and 31, Official Records of said County; thence Westerly along said parallel line South 89° 52' 56" West 48.00 feet; thence tangent to the preceding course on the arc of a curve to the right having a radius of 338.27 feet a central angle of 52° 52' 48" an arc distance of 312.20 feet to the Westerly line of said Lot 12, said property being contiguous at its Southerly terminus of the Northerly line of said Lot 6.

NOTE: That portion of the above described line which lies Northerly of the Southerly terminus of the course South 10° 59' 47" East 87.96 feet is not necessarily centerline of the proposed tract.

7. An easement for railroad, trasnportation, communication etc. and incidental purposes in favor of C C & F Willowdale Western Properties, as provided in a document recorded August 17, 1976 as Instrument No. 60, Official Records.

Affects: as described therein

8. An easement for railroad drill track, spur track, transportation, communication, storm drainage and related purposes and incidental purposes in favor of Amoco Chemicals Corporation, a Delaware corporation, as provided in a document recorded August 30, 1979 as Instrument No. 79-965941, Official Records.

Affects: a strip of land 30 feet in width lying 15 feet on the West side and 15 feet on the East side of the following described line which lies within said Parcel A, 30 feet in width lying 15 feet on each side of the following described line which lies within said 100 foot right-of-way and 25 feet in width lying 10 feet to the right of and 15 feet to the left, in the direction of traverse, of said following described line which lies within said Parcel B, said Parcel C and said Lot 6 and 30 feet in width lying 15 feet on each side of the Easterly 460.03 feet of that portion of said following described line which lies within said Lot 12 and said Lot 13 and lying 15 feet right and 11 feet left in the direction of traverse of the Westerly 293.04 feet of said

following described line which lies within the above-mentioned Lot 12 and Lot 13; said line being more particularly described as follows:

Beginning at the point of intersection of the Northerly line of said Parcel A of said Parcel Map L.A. No. 3041, with a line parallel with and perpendicularly distant 15.00 feet Easterly of the Westerly line of said Parcel A, said Parcel B of said Parcel Map L.A. No. 3463, said Parcel C of said Parcel Map L.A. No. 3041 and said Lot 6 of said Tract No. 32036; thence from said Point of Beginning Southerly along said parallel line South 0° 04' 36" East 2267.76 feet; thence tangent to the preceding course on the arc of a curve to the left having a radius of 385.24 feet a central angle of 8° 57' 55" an arc distance of 60.28 feet; thence non-tangent to the preceding course South 10° 59' 47" East 87.96 feet; thence non-tangent to the preceding course from a tangent which bears South 0° 02' 31" East Southerly on the arc of a curve to the right having a radius of 338.27 feet a central angle of 92° 33' 27" an arc distance of 546.45 feet; thence tangent to the preceding curve South 83° 30' 56" West 50.00 feet to an intersection with a line parallel with and perpendicularly distant 15.00 feet Northerly of the Southerly line of said Lot 12; thence Westerly along said parallel line South 89° 52' 56" West 48.00 feet; thence tangent to the preceding course on the arc of a curve to the right having a radius of 338.27 feet a central angle of 49° 38' 05" an arc distance of 293.04 feet to the Easterly line of an easement for street purposes as described in Instrument No. 3338, recorded October 1, 1971 in Book D-5211 Page 313 of Deeds, Official Records of said County, and the terminus of the herein described strip, said easement being contiguous at its Northerly terminus with the Northerly line of said Parcel A of said Parcel Map L.A. No. 3041 and at its Westerly terminus with said Easterly line of said Easement for street purposes.

EXCEPTING therefrom that portion which lies within the Southerly 4.00 feet of said Lot 12.

9. A Covenant and Agreement, executed by Amcena Properties, Inc., in favor of the City of Los Angeles, and recorded January 9, 1986 as Instrument No. 86-031432, Official Records.

Said Covenant and Agreement, among other things, provides for the following:

"We do hereby covenant and agree to and with said City to maintain a yard of 30 feet in width along the full common property line (our North property line).

This covenant and agreement shall run with the land and be binding upon any future owners, encumbrancers, their successors, heirs or assignees, and shall continue in effect until the Advisory Agency of the City of Los Angeles approves its termination.

10. A document entitled "Agreement", dated December 19, 1985, executed by and between R. R. Donnelley & Sons Company, a Delaware corporation and Amcena

Properties, Inc., a corporation, and recorded January 13, 1986 as Instrument No. 86-043898, Official Records.

Which recites in part:

"Donnelley is executing a Covenant and Agreement Regarding Maintenance of Building (the "Donnelley Covenant") whereby Donnelley agrees to maintain a yard of 30 feet in width along the full common property line with the Amcena Property.

In consideration of Amcena executing a Covenant and Agreement Regarding Maintenance of Building whereby Amcena also agrees to maintain on the Amcena Property a yard of 30 feet in width along the full common property line with the Donnelley Property, Donnelley further covenants and agrees with Amcena that it will not request the release of the Donnelley Covenant by the City of Los Angeles without the prior written consent of Amcena or the then owner of the Amcena Property.

This Agreement shall run with the Donnelley Property and shall be binding upon Donnelley and all further owners of the Donnelley Property, their successors, heirs or assigns.

TRW
Real Estate Information

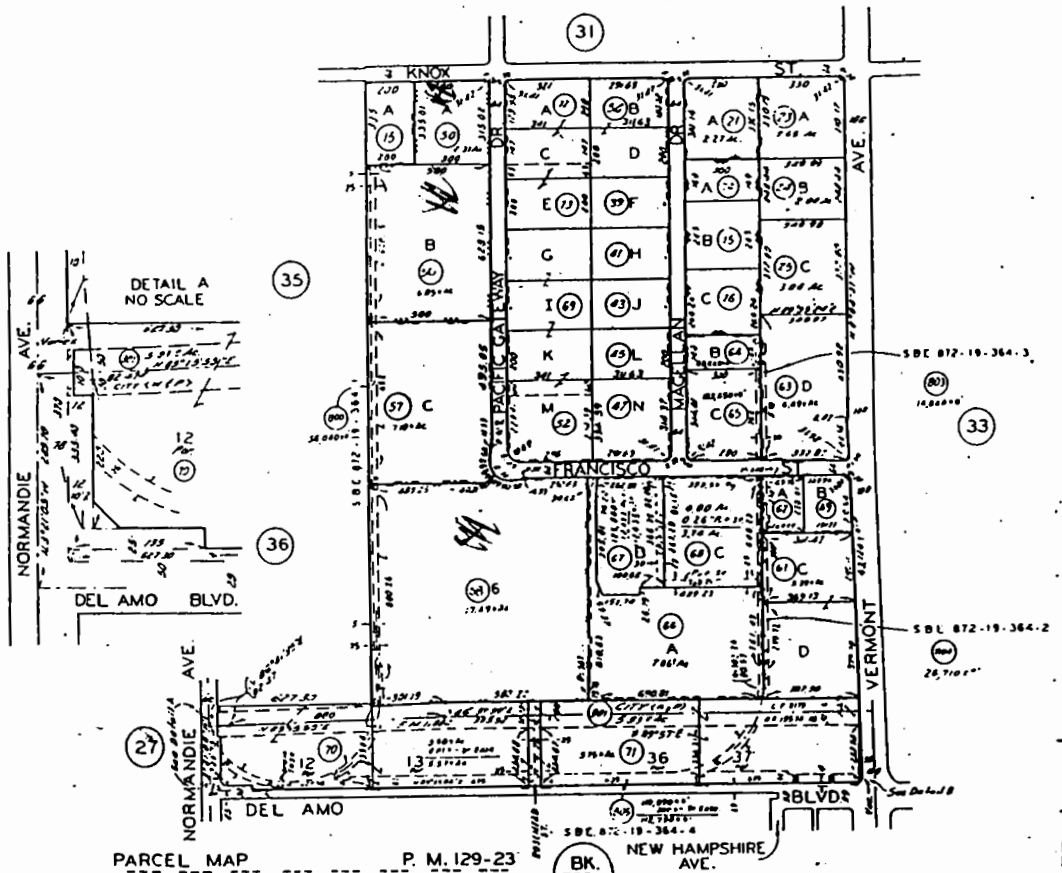
1.800.527.9663

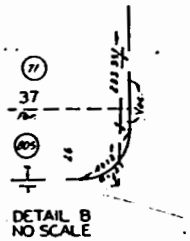
7351 34

SCALE 1" 400

SCALE 1 (10/INCH) 0 10 20 30 40 50 60

002 00036





CODE
510

FOR PREV. ASSMT SEE:
7350-12
7351-31

PARCEL MAP	P. M. 129-23
PARCEL MAP	P. M. 79-18-19
PARCEL MAP	P. M. 67-94-95
PARCEL MAP	P. M. 68-69-70
PARCEL MAP	P.M. 62-64
TRACT NO. 4671	M. B. 56-30-31
PARCEL MAP	P. M. 61-79-80
PARCEL MAP	P. M. 68-71
PARCEL MAP	P. M. 76-14
PARCEL MAP	P. M. 63-99
TRACT NO. 32036	M. B. 851-12-14
PARCEL MAP	P. M. 61-81-82

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

7351
SCALE 1"
ST.
KNOX

ISSUED FROM THE
OFFICE OF

COMMONWEALTH
TITLE COMPANY

A SUBSIDIARY OF
COMMONWEALTH
LAND TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

LOS ANGELES COUNTY
20750 VENTURA BLVD., STE 350
WOODLAND HILLS, CA 91364
(818) 888-7655/(213) 556-1300
(818) 448-4026/(213) 641-9080
(213) 872 3903/(800) 526-4422
(800) 536-0158

ORANGE COUNTY
200 WEST SANTA ANA BLVD
SUITE 700
SANTA ANA, CA 92701
(714) 935-8511/(800) 458-9994
SOUTH ORANGE COUNTY
(714) 496-3152

SAN BERNARDINO COUNTY
275 W. HOSPITALITY LANE, STE 100
P.O. BOX 5789
SAN BERNARDINO, CA 92408
(714) 888-7541
(800) 472-5613

VENTURA COUNTY
300 ESPLANADE DRIVE
FINANCIAL PLAZA
OXNARD, CA 93030
(805) 485-8895
(805) 647-4427/(805) 522-2500

American Land Title Association
Owner's Policy Form B 1970
(Rev. 10-17-70 and 10-17-84)

POLICY
OF
TITLE
INSURANCE

Issued By

COMMONWEALTH
LAND TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

Title Insurance Since 1876

HOME OFFICE
EIGHT PENN CENTER
PHILADELPHIA, PA 19103

B-1005-8

ISSUED FROM THE
OFFICE OF

COMMONWEALTH
TITLE COMPANY

A SUBSIDIARY OF
COMMONWEALTH
LAND TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

LOS ANGELES COUNTY
20750 VENTURA BLVD., STE 350
WOODLAND HILLS, CA 91364
(818) 888-7655/(213) 556-1300
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FINANCIAL PLAZA
OXNARD, CA 93030
(805) 485-8895
(805) 647-4427/(805) 522-2500

CONDITIONS AND STIPULATIONS

(Continued)

7. LIMITATION OF LIABILITY

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

8. REDUCTION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

9. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

10. APPORTIONMENT

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

11. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

12. LIABILITY LIMITED TO THIS POLICY

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendement of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to Commonwealth Land Title Insurance Company, Eight Penn Center, Philadelphia, Pennsylvania 19103.

002 00037

Coca-Cola Enterprises
A Bottling System

June 27, 1989

U.S. CERTIFIED MAIL, POSTAGE PREPAID,
RETURN RECEIPT REQUESTED

Amcena Properties, Inc.
Ninth Floor
358 Fifth Avenue
New York, New York 10001
Attention: Miles P. Fischer Esq.

Re: 19899 Pacific Gateway Drive
Los Angeles, California

Gentlemen:

Reference is made to that certain Agreement for Purchase and Sale of Property and Escrow Instructions (the "Original Agreement") dated September 23, 1988, between Amcena Properties, Inc., a California corporation ("Seller") and Coca-Cola Bottling Company of Los Angeles, a Delaware corporation ("Buyer"), that certain First Amendment to Agreement for Purchase and Sale of Property and Escrow Instructions (the "First Amendment") dated October 21, 1988, between Seller and Buyer, and that certain Second Amendment to Agreement for Purchase and Sale of Property and Escrow Instructions (the "Second Amendment") dated December 14, 1988 between Seller and Buyer (the Original Agreement, the First Amendment and the Second Amendment are sometimes collectively referred to herein as the "Agreement").

Please be advised that Buyer obtained the permit to demolish the building (the "Building") located on the above-referenced property (the "Property") on February 14, 1989 (a copy of such permit is attached to this letter), demolished the Building and discovered the presence of hazardous and/or toxic substances and/or materials ("Hazardous Substances") in the soil within the Building's perimeter. Buyer has and intends to continue removal, remediation and other appropriate response actions with respect to such Hazardous Substances and any other hazardous and/or toxic substances and/or materials located within the perimeter of the Building.

Under section 3 of the Second Amendment, Buyer hereby makes claim on Seller for reimbursement and indemnification by Seller of Buyer for the costs of such removal, remediation and other response actions (collectively the "Response Costs"). Buyer shall provide to Seller evidence of payment by Buyer of Response Costs as soon as such evidence is available. In accordance with

Subsection 3.1 of the Second Amendment, Seller is obligated to make payment to Buyer of the Response Costs promptly upon presentation of such evidence.

If you have any questions please call.

Sincerely,

Coca-Cola Bottling Company
of Los Angeles

By _____

Its V.P. Mfg.

cc. Mr. Paul Schlarman
Maurices, Inc.
105 West Superior Street
Duluth, Minnesota 55802

Shea & Gould
1800 Avenue of the Stars
Suite 500
Los Angeles, California 90067
Attention: Daniel M. Herscher, Esq.

) Certified Mail,
) Postage Prepaid
) Return Receipt
) Requested
) (w/encl.)

3 FOR INSPECTION

AND FOR CERTIFI[CATE] OF OCCUPANC[Y]

INSTRUCTIONS: 1. Applicant to Complete Numbered Items Only.

1. LEGAL DESCR.	LOT C	BLOCK	TRACT PM 13041	COUNCIL DISTRICT NO 15	DIST. MAP 057B157
					CENSUS TRACT 2921

2. PRESENT USE OF BUILDING ( ) Warehouse — NEW USE OF BUILDING ( ) Demo — ZONE M3-1

3. JOB ADDRESS 19899 S. Pacific Gateway Dr. LA — FIRE DIST. II

4. BETWEEN CROSS STREETS Francisco St./Knox St. AND (61181) — LOT TYPE Cor

5. OWNER'S NAME Coca-Cola Bottling Co. of Los Angeles PHONE 746-5555 — LOT SIZE Irr

6. OWNER'S ADDRESS 1333 S. Central Av. CITY CA 90021 ZIP

7. ENGINEER — BUS. LIC. NO. — ACTIVE STATE LIC. NO. — PHONE — ALLEY

8. ARCHITECT OR DESIGNER — BUS. LIC. NO. — ACTIVE STATE LIC. NO. — PHONE — BLDG. LINE

9. ARCHITECT OR ENGINEER'S ADDRESS — CITY — ZIP — AFFIDAVITS AFF 45285

10. CONTRACTOR — BUS. LIC. NO. — ACTIVE STATE LIC. NO. 746-5555 — OB 14477

11. SIZE OF EXISTING BLDG. 895 WIDTH LENGTH — STORIES — HEIGHT — NO. OF EXISTING BUILDINGS ON LOT AND USE — P.C. REQ'D Yes

12. CONST. MATERIAL OF EXISTING BLDG. → EXT. W/conc — ROOF mtl — FLOOR conc

3

13. JOB ADDRESS 19899 S. Pacific Gateway Dr. — STREET GUIDE — DISTRICT OFFICE SP

14. VALUATION TO INCLUDE ALL FIXED EQUIPMENT REQUIRED TO OPERATE AND USE PROPOSED BUILDING $ 160,000.00 — SEISMIC STUDY

15. NEW WORK (Describe) Demolition of existing structure — GRADING — HWY. DED.

NEW USE OF BUILDING Demo — SIZE OF ADDITION — STORIES — HEIGHT — ZONED BY Griffith

TYPE — GROUP OCC. — FLOOR AREA — PLANS CHECKED — FILE WITH

DWELL UNITS — MAX OCC. — TOTAL — APPLICATION APPROVED — TYPIST tub

GUEST ROOMS — PARKING REQ'D — PARKING PROVIDED STD. COMP. — INSPECTION ACTIVITY COMB | GEN | MAJ.S | CONS | E.Q — INSPECTOR

B & S B-

P.C	G.P.I.	CONT. INSP.
S.P.C	P.M.	
B.P.	E.I.	Claims for refund of fees paid on permits must be filed: 1. Within one year from date of payment of fee, or 2. Within one year from date of expiration of extension for building or grading permits granted by the Dept. of B. & S. SECTIONS 22.12 & 22.13 LAMC.
I.F.	F.H	
S.D	O.S.S	
DIST. OFFICE SP	S.O.S.S.	SPRINKLERS REQ'D SPEC.
P.C. NO. L1028	C/O	ENERGY

CASHIER'S USE ONLY

Unless a shorter period of time has been established by an official action, plan check approval expires one year after the fee is paid and this permit expires two years after the fee is paid or 180 days after the fee is paid if construction is not commenced

CITY OF LOS ANGELES DEPARTMENT OF BUILDING AND SAFETY FEB14 '89 AMOUNT

CHECK B-I-C BP-N EI-C FINE OSS

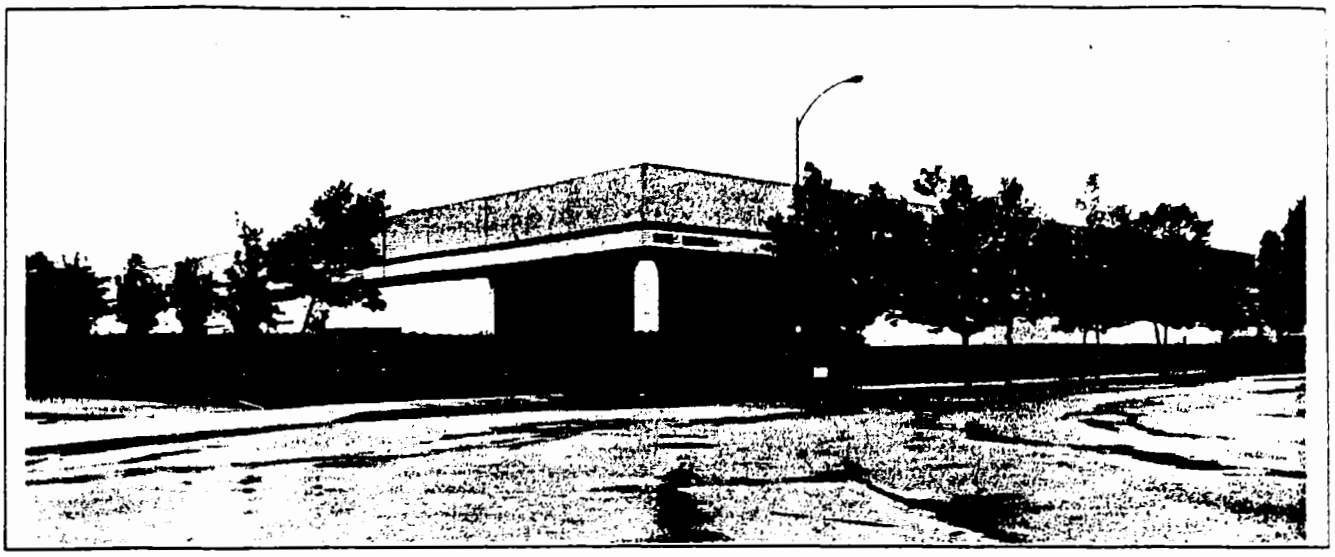
CITY OF LOS ANGELES DEPARTMENT OF BUILDING AND SAFETY FEB14 '89

002 00047

FOR SALE

AVAIL. SQ. FT: 160,000

TOTAL BLDG. SQ. FT: 160,000



ADDRESS 19899 PACIFIC GATEWAY DRIVE, TORRANCE **ZIP** 90502

A RARE OPPORTUNITY

* Outstanding Pacific Gateway location *

This superb corporate headquarters is suitable for warehousing, distribution and manufacturing. It has two yards, lending itself to being divided to provide for future expansion or income. The building is currently undergoing a complete renovation.

SALE PRICE $ 10,000,000 Price/sf $ 62.50

Terms Cash

Possession Upon close of escrow

Avail sf 160,000 Dim 400 x 400 Power 1000 A 277/480 V 3 ø 4 wire; verify independ.

Land sf 325,393 Dim IRR x IRR Lighting Fluorescent Heat Yes Cooling No

Const C.T.U. Roof Glu Lam Trk Hi Drs *6 Dim 12 x 20; (2) 12x14 Dock Yes Well Yes

Sprkd Avg. Haz. Min Clr Hgt 22' Grd Lev Drs 2 Dim 12 x 12 Rail 4 spots

Foil Yes Skits Yes Storage Mezz sf No Incl in avail sf? No Rest Rms: M Several W locations

Pkg 259 Fenced Yes Yr Blt 1976 **OFFICE DATA** Ofc sf 4,000 # 5 Rest Rms: M 3T 4U W 3

Thomas Bk Pg # 68F2 Zone M3-1 A/C Yes Heat Yes Finished Ofc Mezz sf None Incl in avail sf? No

Key Contact broker - alarm

LISTED BY F. Ronald Rader Phone (213) 678-3773 Area South Listing # I-27574-880422

David A. Prior

Todd N. Taugner

*More loading doors could be added

THE KLABIN COMPANY

INDUSTRIAL AND COMMERCIAL REAL ESTATE • SINCE 1961

9111 South La Cienega Blvd., Inglewood, CA 90301-4467

(213) 678-3773 • FAX (213) 337-0078

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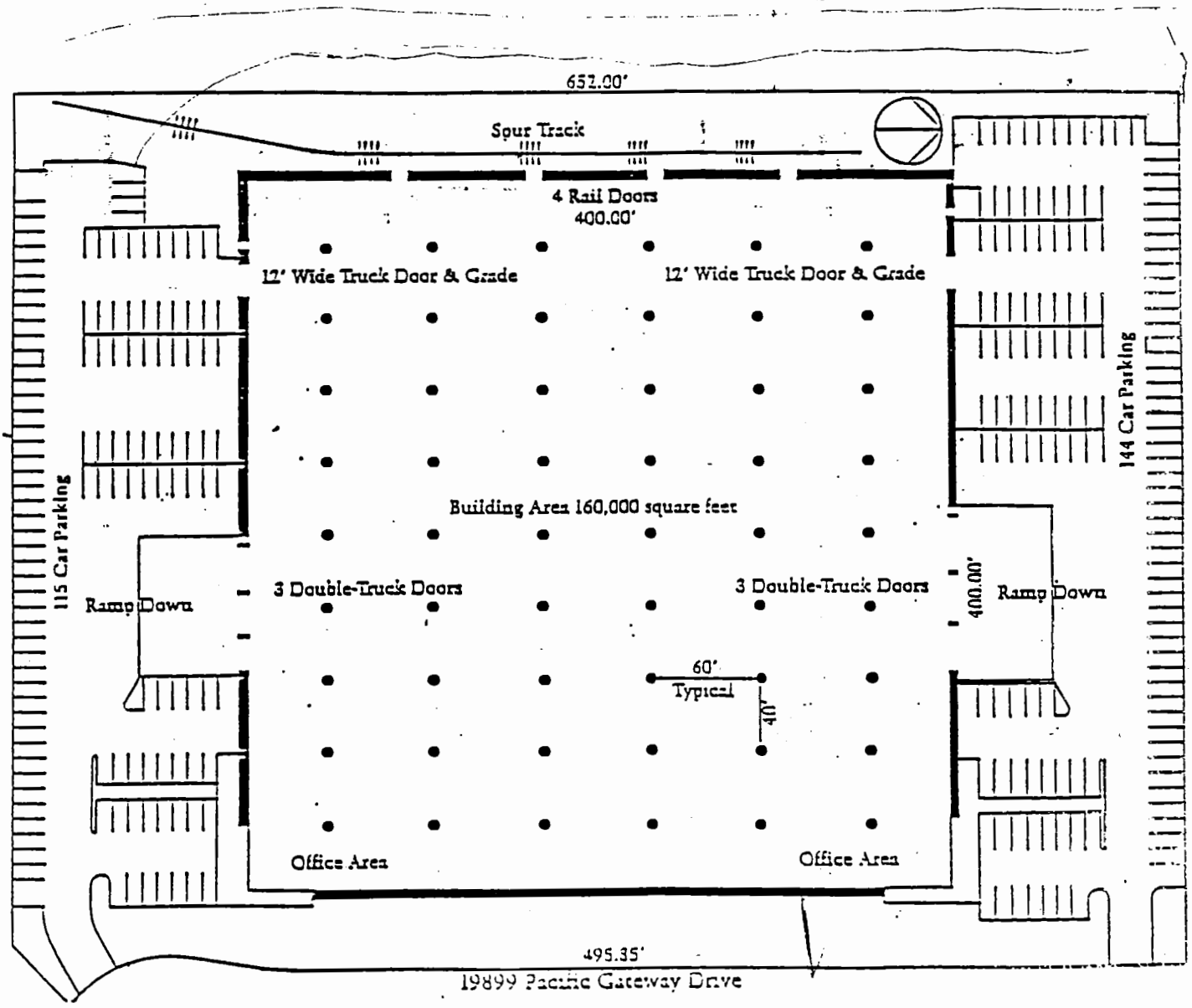
652.00'
Spur Track
4 Rail Doors
400.00'
12' Wide Truck Door & Grade
12' Wide Truck Door & Grade
144 Car Parking
115 Car Parking
Building Area 160,000 square feet
Ramp Down
3 Double-Truck Doors
3 Double-Truck Doors
400.00'
Ramp Down
60'
Typical
40'
Office Area
Office Area
495.35'
19899 Pacific Gateway Drive